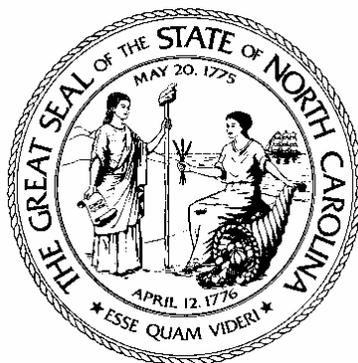


**House Select Committee  
On Education of Students with Disabilities**



***REPORT TO THE  
HOUSE OF REPRESENTATIVES  
OF THE 2007 SESSION  
OF THE GENERAL ASSEMBLY  
OF NORTH CAROLINA***

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# TABLE OF CONTENTS

LETTER OF TRANSMITTAL.....	i
COMMITTEE MEMBERSHIP .....	ii
AUTHORIZING LETTER.....	iii
PREFACE .....	v
COMMITTEE PROCEEDINGS.....	1
COMMITTEE MINUTES .....	5
COMMITTEE RECOMMENDATIONS .....	31
LEGISLATIVE PROPOSALS .....	34
PROPOSAL I –AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON EDUCATION OF STUDENTS WITH DISABILITIES TO ADD A PROTECTION FOR CHILDREN NOT DETERMINED ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES .....	35
PROPOSAL II – AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO DIRECT THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA TO REPORT ON THE EFFICACY OF THE PREPARATION OF TEACHERS TO TEACH STUDENTS WITH DISABILITIES .....	36
PROPOSAL III – AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO REQUIRE THE STATE BOARD OF EDUCATION TO ESTABLISH A PILOT PROGRAM TO CREATE APPROPRIATE ALTERNATIVE PROGRAMS FOR STUDENTS WHO ARE SUSPENDED OR EXPELLED FOR MORE THAN TEN DAYS, INCLUDING STUDENTS WITH DISABILITIES WHO HAVE DISCIPLINE ISSUES.....	37
PROPOSAL IV – AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO REQUIRE THE STATE BOARD OF EDUCATION TO DEVELOP GUIDELINES TO PROVIDE ONLINE INSTRUCTION FOR STUDENTS WHO ARE SUSPENDED OR EXPELLED FOR MORE THAN TEN DAYS AND TO ESTABLISH A PILOT PROGRAM .....	39

PROPOSAL V – AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO PROVIDE HOMEBOUND INSTRUCTION FOR DISCIPLINE PURPOSES WHEN IT IS THE LEAST RESTRICTIVE ALTERNATIVE FOR STUDENTS WITH DISABILITIES AND TO REQUIRE A REGULAR EVALUATION OF THE APPROPRIATENESS OF THE HOMEBOUND INSTRUCTION ..... 41

PROPOSAL VI – A HOUSE RESOLUTION ENCOURAGING THE DIVISION OF MEDICAL ASSISTANCE OF THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES TO MOVE EXPEDITIOUSLY TO SEEK MEDICAID REIMBURSEMENT FOR LOCAL SCHOOL ADMINISTRATIVE UNITS' ADMINISTRATION OF THE SCHOOL BASED MEDICAID FEE-FOR-SERVICE PROGRAM..... 42

PROPOSAL VII – AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO REQUIRE THE DEPARTMENT OF PUBLIC INSTRUCTION TO STUDY THE DELIVERY OF EDUCATIONAL AND OTHER SERVICES TO STUDENTS WITH DISABILITIES AT THE HIGH SCHOOL LEVEL AND REPORT TO THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE ..... 44

PROPOSAL VIII – AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO REQUIRE THE STATE BOARD OF EDUCATION TO DEVELOP A TRAINING PROGRAM FOR TEACHERS AND SCHOOL PERSONNEL ON THE DUAL SYSTEM OF DISCIPLINE AND TO REQUIRE LOCAL BOARDS OF EDUCATION TO IMPLEMENT THE TRAINING PROGRAM ON THE DUAL SYSTEM OF DISCIPLINE ..... 45

PROPOSAL IX – AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO ALLOW STUDENTS PLACED ON SHORT TERM SUSPENSIONS TO TAKE THEIR TEXTBOOKS HOME FOR THE DURATION OF THE SHORT TERM SUSPENSION AND TO HAVE ACCESS TO HOMEWORK ASSIGNMENTS ..... 47

PROPOSAL X – AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO ADD FIVE PROFESSIONAL DEVELOPMENT DAYS FOR TEACHERS ..... 48

PROPOSAL XI – AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO CLARIFY THE DEFINITION OF RESIDENCE FOR THE DELIVERY OF SPECIAL EDUCATION SERVICES ..... 52

PROPOSAL XII – AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO INCREASE THE PER CHILD WITH DISABILITIES ALLOCATION ..... 53

PROPOSAL XIII – AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO ESTABLISH A POSITIVE BEHAVIOR SUPPORT COORDINATOR POSITION AT THE DEPARTMENT OF PUBLIC INSTRUCTION AND APPROPRIATE FUNDS FOR THE POSITION.....	54
PROPOSAL XIV – AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO ESTABLISH STANDARDS FOR HOMEBOUND INSTRUCTION .....	55
APPENDIX .....	56
A - CHART, CHILD COUNT BY DISABILITY CATEGORY AND ETHNICITY.....	57
B - MEMORANDUM OF UNDERSTANDING.....	58
C – INTERIM REPORT, MAY 2006 .....	71

STATE OF NORTH CAROLINA

HOUSE SELECT COMMITTEE ON EDUCATION OF STUDENTS  
WITH DISABILITIES



December 19, 2006

TO THE MEMBERS OF THE HOUSE OF REPRESENTATIVES OF THE 2007 SESSION OF  
THE GENERAL ASSEMBLY:

Attached for your consideration is a report to the House of Representatives of the 2007 General Assembly. This report was prepared by the House Select Committee on Education of Students with Disabilities pursuant to G.S. 120-19.6(a) and Rule 26(a) of the Rules of the House of Representatives of the 2005 General Assembly.

Respectfully submitted,

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Representative Rick Glazier  
Chair

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Representative Jean Farmer-Butterfield  
Vice-Chair

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Representative Jean R. Preston  
Vice-Chair

HOUSE SELECT COMMITTEE ON EDUCATION OF STUDENTS WITH  
DISABILITIES

2005-2006 MEMBERSHIP

Representative Rick Glazier, Chair  
Representative Jean Farmer-Butterfield, Vice-Chair  
Representative Jean R. Preston, Vice-Chair  
Representative Bernard Allen  
Representative Larry M. Bell  
Representative Becky Carney  
Representative Arlie F. Culp  
Representative Maggie Jeffus  
Representative Linda P. Johnson  
Representative Earline W. Parmon  
Representative Edith D. Warren  
Representative Laura I. Wiley

COMMITTEE STAFF

Shirley Iorio  
Drupti Chauhan  
Adam Levinson  
Carin Savel, Committee Assistant



Office of the Speaker  
North Carolina House of Representatives  
Raleigh, North Carolina 27601-1096

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## HOUSE SELECT COMMITTEE ON EDUCATION OF STUDENTS WITH DISABILITIES

### TO THE HONORABLE MEMBERS OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES

**Section 1.** The **House Select Committee on Education of Students With Disabilities** is established by the Speaker, effective December 1, 2005, as a select committee of the House pursuant to G.S. 120-19.6(a) and Rule 26(a) of the Rules of the House of Representatives of the 2005 General Assembly.

**Section 2.** The Select Committee consists of twelve members. The individuals listed below are appointed as members of the Select Committee. Members serve at the pleasure of the Speaker of the House of Representatives.

	Representative Rick Glazier, Chair
Representative Bernard Allen	Representative Linda P. Johnson
Representative Larry M. Bell	Representative Earline W. Parmon
Representative Becky Carney	Representative Jean R. Preston
Representative Arlie F. Culp	Representative Edith D. Warren
Representative Jean Farmer-Butterfield	Representative Laura I. Wiley
Representative Maggie Jeffus	

**Section 3.** The Select Committee may meet during the interim period between regular sessions upon the call of its chair.

**Section 4.** The Select Committee shall study and recommend revisions to the General Statutes governing the education of students with disabilities for the following purposes:

- (1) To update definitions and requirements to ensure that the public schools and education programs for students with disabilities are meeting these students' special needs.
- (2) To provide a consistent statutory maximum age for students with disabilities entitled to a free appropriate public education.

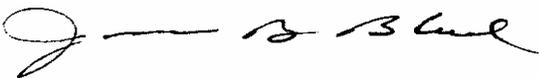
- (3) To reflect higher education expectations for children with disabilities and the requirements of the State's school accountability program.
- (4) To ensure that schools and school systems are held accountable for the educational progress of students with disabilities.
- (5) To determine whether the Department of Public Instruction has adopted guidelines that have had an unfunded fiscal impact on local school systems, and if so, how to address this in the future.
- (6) To ensure that the General Statutes are consistent with federal law governing the education of all children, including exceptional children.

**Section 5.** The Select Committee shall report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before December 31, 2006, by filing a report with the Speaker's offices, the House Principal Clerk, and the Legislative Library. The Select Committee terminates on December 31, 2006, or upon the filing of its final report, whichever occurs first.

**Section 6.** The Select Committee is vested with the authority contained in Article 5A of Chapter 120 of the General Statutes.

**Section 7.** Members of the Select Committee shall receive per diem, subsistence, and travel allowance at the rate established in G.S. 120-3.I.

**Section 8.** The expenses of the Select Committee are considered expenses incurred for the operation of the House of Representatives and shall be paid pursuant to G.S. 120-35 from funds available to the House for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of a co-chair of the Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.



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James B. Black  
Speaker

## PREFACE

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In 2005, the House Select Committee on Education of Students with Disabilities was established to study and recommend revisions to the General Statutes governing the education of students with disabilities for the following purposes:

- (1) To update definitions and requirements to ensure that the public schools and education programs for students with disabilities are meeting these students' special needs.
- (2) To provide a consistent statutory maximum age for students with disabilities entitled to a free appropriate public education.
- (3) To reflect higher education expectations for children with disabilities and the requirements of the State's school accountability program.
- (4) To ensure that schools and school systems are held accountable for the educational progress of students with disabilities.
- (5) To determine whether the Department of Public Instruction has adopted guidelines that have had an unfunded fiscal impact on local school systems, and if so, how to address this in the future.
- (6) To ensure that the General Statutes are consistent with federal law governing the education of all children, including exceptional children.

North Carolina has been a leader in special education, establishing State law in 1974, before the first federal law on the subject passed in 1975. North Carolina's special education policy is set out in Article 9 of Chapter 115C of the General Statutes. This law has developed not only because of the federal mandates, but also because of the dedication and commitment of the General Assembly. In 2006, this Committee recommended a complete repeal, modernization, and revision of the 1974 law, which passed the General Assembly and is now law. That landmark legislation, along with the bills proposed in this report, continue the Legislature's unwavering commitment and tradition as a national leader in the delivery of special education to the children of North Carolina.

One of the many challenges for State policymakers is how to continue to adequately fund special education. The Individuals with Disabilities Act (IDEA) is the federal special education law that provides funding to assist states in providing education to students with varying degrees of disability. In exchange for federal funding, IDEA requires states to provide a free appropriate public education (FAPE) in the least restrictive environment (LRE). When Congress first passed IDEA in 1975, it committed to pay up to 40 percent of the national average per pupil expenditures to offset the excess cost of educating children with disabilities. Congress has never funded special education to that level and, consequently, the State and local school administrative units have had to make up substantial differences in funding.

In North Carolina, the number of students with disabilities is growing and the amount of funding has not kept pace. In addition to federal funding, each local school administrative unit receives State funds for the lesser of (i) all children who are

identified as children with disabilities, or (ii) 12.5% of the allocated average daily membership. Most school systems are over this 12.5% funding cap. Therefore, this allocation is insufficient in that it funds only 173,000 of the 197,000 students currently identified as students with disabilities (Appendix 1). The local school administrative units must fund the increasing difference. This report recommends a number of steps to ease that burden and provide more of the State resources needed to meet the unmet needs of children and districts.

The Committee heard testimony about the inappropriate over-identification or disproportionate representation by race and ethnicity of students as students with disabilities, particularly in the categories of Learning Disabilities and Behavioral and Emotional Disabilities. Members of the Committee continue to have concerns about these kinds of disproportionality and urge DPI and LEAs to focus on this issue over the coming year to assure the over-identification issues in individual districts and exceptionalities are remedied at a site and district level. If that does not occur, prompt and meaningful state intervention will be mandated.

This report also focuses on the professional developmental needs of faculty and staff to work with increasingly diverse populations of students with special needs and on the best practices available and resources necessary to achieve the best results for all students. The report further encourages resources be applied to increase the availability of successful interventions in schools, like Positive Behavior Support, which appears, by all measures, to be making a true difference for students and districts.

This report and the work of this Select Committee were aided by faithful attendance and outstanding bi-partisan support of the members of the Committee through numerous meetings over the last year; many educational and child advocacy interest groups who offered extensive time, testimony, and suggestions, and constantly provided constructive input to make the delivery of special education services better, fairer, and more efficient throughout North Carolina; the Department of Public Instruction, whose assistance and resources was invaluable in all aspects of the Committee's work; and most of all, the legislative staff, who are exceptional professional colleagues and who truly have well served the children of North Carolina by their efforts to guide this Committee's work and draft this report and proposed legislation.

Rep. Rick Glazier  
Chairman

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# **Committee Proceedings**

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## **COMMITTEE PROCEEDINGS**

The House Select Committee on Education of Students with Disabilities met six times between January and May 2006, and submitted an Interim Report on May 3, 2006 (Appendix C).

The Committee met five times between September and December 2006.

### **September 28, 2006**

#### **Welcome/Introductions**

Representative Glazier

#### **Disproportionality Issues**

- National data – Molly Ryan, Staff Attorney, School Boards Association
- State data - What are the problems? – Mary Watson, Director, Exceptional Children Division, DPI
- Existing efforts to remedy the problems; have they been successful; what legislative action is needed
  - State Plan – Mary Watson, DPI
  - Bill Trant, Executive Director, Exceptional Children, New Hanover County Schools, Council of Administrators of Special Education (CASE) member
  - Cathy Boshamer, EC Director, Gaston County, In-coming President of the Council of Administrators of Special Education (CASE)
  - Dr. Ernest McNeill, Dean, School of Education, Fayetteville State University

#### **Discipline Issues**

- Overview of Discipline Issues for Students With Disabilities – Mary Watson, Director, Exceptional Children Division, DPI
- Local Board Perspective on Discipline Issues for Students With Disabilities – Ann Majestic, Attorney, Wake County School System
- Cathy Boshamer, EC Director, Gaston County, In-coming President of the Council of Administrators of Special Education (CASE)
- Connie Hawkins, Director, Exceptional Children's Assistance Center
- Ellen Russell, Special Needs Federation, Director of Advocacy and Chapter Services, The Arc of North Carolina

#### **Update on House Bill 1032**

- Mary Watson, Director, Exceptional Children Division, DPI
- Kendra Dockery, NC School Boards Association
- Doug Punger, Attorney, Winston-Salem/Forsyth County School System
- Bill Trant, Executive Director, Exceptional Children, New Hanover County Schools
- Jeff Larson, Director of Secondary Special Education Programs, Wake County Public Schools

#### **Committee Discussion**

## **October 24, 2006**

### **Discipline Issues**

- Overview of Discipline Issues for Students With Disabilities – Mary Watson, Director, Exceptional Children Division, DPI
- Connie Hawkins, Director, Exceptional Children's Assistance Center
- Ellen Russell, Special Needs Federation, Director of Advocacy and Chapter Services, The Arc of North Carolina
- Christine Trottier, Interim Co-Director, Carolina Legal Assistance
- Jane Wettach, Director, Children's Education Law Clinic, Duke University

### **Update on House Bill 1032**

- Mary Watson, Director, Exceptional Children Division, DPI
- Allison Schafer, NC School Boards Association
- Bill Trant, Executive Director, Exceptional Children, New Hanover County Schools
- Jeff Larson, Director of Secondary Special Education Programs, Wake County Public Schools

### **Committee Discussion**

- Disproportionality
- Discipline

## **November 16, 2006**

### **Medicaid Issues**

- Rick Jacobs, Principal, Fairbanks LLC
- Sam Dempsey, Division Director, Exceptional Children, Winston-Salem/Forsyth County Schools
- Tara Larson, Assistant Director, Clinical Policies and Programs, DMA, DHHS

### **Memorandum of Understanding for Due Process Hearings**

- Mary Watson, Director, Exceptional Children Division, Department of Public Instruction
- Judge Elkins, Administrative Law Judge, Office of Administrative Hearings
- Chris Campbell, Chair, NC Council of School Attorneys (NCCOSA)

### **Tax Credit for Children with Special Needs**

- Representative Stam

### **Committee Discussion**

- Possible Recommendations

## **December 12, 2006**

### **Medicaid Status Report**

- Tara Larson, Assistant Director, Clinical Policies and Programs, Division of Medical Assistance, DHHS

### **Textbook Funds**

- Mary Watson, Director, Exceptional Children Division, Department of Public Instruction

### **Residency Issues**

- Leanne Winner, Director of Governmental Relations, North Carolina School Boards Association

### **Follow-Up to Various Information Requests**

- Mary Watson, Director, Exceptional Children Division, Department of Public Instruction
- Adam Levinson, Fiscal Analyst, Fiscal Research Division, NC General Assembly

### **Committee Discussion**

- Remaining Recommendations
- Draft Legislation

## **December 19, 2006**

### **State Board of Education Expansion Budget Request**

- Philip Price, Associate Superintendent, Financial and Business Services, NC Department of Public Instruction

### **Ad Hoc Academic Rigor, Relevance and Relationships Comm. Report**

- Dr. Rebecca Garland, Executive Director, State Board of Education

### **Committee Discussion**

- Draft Legislation
- Draft Final Report

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# Committee Minutes

In addition to these minutes, the Committee Assistant maintains a notebook containing complete committee minutes for each meeting and all information presented to the committee.

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**MINUTES**  
**HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH**  
**DISABILITIES**

September 28, 2006

**The House Select Committee on the Education of Students with Disabilities** met on Thursday September 28, 2006, in Room 544 of the Legislative Office Building at 9:00 AM. The following members were present: Chairman Rick Glazier, Vice Chairs Jean Farmer-Butterfield and Jean Preston, and Members: Rep. Larry Bell, Rep. Arlie Culp, Rep. Edith Warren, Rep. Laura Wiley, Rep. Linda Johnson and Rep. Laura Wiley. Shirley Iorio, Adam Levinson and Drupti Chauhan, Committee Staff, were in attendance. A Visitor Registration list is attached and made part of these minutes.

Chairman Glazier called the meeting to order and introduced the Sergeant-At-Arms. Minutes were unanimously approved.

**Disproportionality Issues**

**Molly Ryan, Staff Attorney for the School Board Association**, presented an overview of issues and national data. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- Focus on 6-21 years old
- 62% White
- 17% Hispanic
- 15% total African American representation, but they make up over 20% of special education students= over represented
- Relative Risk Rates: compare the proportion of a particular racial/ethnic group served under IDEA
- African Americans are 3x more likely to get help for mental retardation
- Asians are 2.5x more likely to get help for serious emotional disturbance

**Mary Watson, Director, Exceptional Children Division, DPI**, presented a overview of state data. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- State data—what are the problems?
- AIG; gross under-representation
- Levels of significance

**NC DPI recommendations include:**

- Reading coaches be paid by the federal government
- Six regional post behavior supporters
- State level of participation
- Principals more involved with EC students

- Not about changing direction; must change adult teaching skills
- Federally funded 'Bright Idea'
- Training adults to be more responsive to all cultures

**What can the GA do?**

- Provide support for LEA's and SEA's for research-based interventions
- Federal funding is not enough
- Person assigned to coordinate efforts of positive behavior support

Other points:

- Reliability process is defined by a team of professionals
- Other states have a more differentiated infrastructure to ID students
- Concerns about assumptions made in ID process; how to ensure accuracy
- Addressing ID process child by child
- Other reasons for over identification; pre-natal care, drug addiction; economic,
- Other age groups for targeting
- Bright Idea project; appropriate instruction would solve a lot of problems
- Teacher education programs; teachers should be prepared to teach all kinds of children
- Teacher dispositions must change enough to set standards for all children
- Under performance should not be confused with students with disabilities.
- Disproportionate number of African American students are identified in NC; seems to indicate there are other factors involved

Rep. Glazier requested information of when age targeting is occurring.

Rep. Glazier requested More-at-Four and Smart Start impact data.

Rep. Bell requested Head Start impact data.

Rep. Glazier requested data LEA private schools for 5 years as compared to Special Education growth.

**Bill Trant, Executive Director, Exceptional Children, New Hanover County Schools** presented an overview of issues, approaches and challenges of disproportionality. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- To what extent is disproportionality a symptom of overall performance in a school?
- Are evaluation practices biased?
- General costs of the training program for school teachers
- A new position needs to be created at some schools

**Cathy Boshamer, EC Director, Gaston County Schools, and In-coming President of the Council of Administrators of Special Education (CASE)** presented an overview of

issues concerning disproportionality. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- Teaching people to look at children individually before evaluating
- All teachers should have information on how to recognize cultural differences before assessing disability
- If schools have a disproportionate number of EC students after multiple years of evaluating, it is better to work together so that sanctions do not come into play
- Training is necessary to examine situation as ‘needs-assessments’

**Dr. Ernest McNeill, Dean, School of Education, Fayetteville State University,** presented an overview of issues concerning diversity and disproportionality. The presentation addressed the following issues:

- Masters program at FSU has a course on diversity to recognize issue
- Cultural considerations
- Diversity training is needed
- All students are considered part of diversity—even Caucasians
- Teachers must learn how to reach all students
- It is the teacher’s job to keep up with training
- Part of life is that we all process things differently
- Diversity means everyone

**Ann Majestic, Attorney, Wake County School System,** presented an overview of issues concerning IDEA regulations on discipline. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- We get sued more often if we don’t identify, rather than over identification
- Behaviorally Emotionally Disturbed (BED)
- Federal law has made standards
- Pendulum has swung towards safety
- Harder for Special Education student to prove that his behavior was a manifestation of his disability
- More EC students will be suspended
- Administrative tensions: BAD v BED
- There is no barrier to the state to create a pull-out project

**Cathy Boshamer, EC Director, Gaston County Schools, and In-coming President of the Council of Administrators of Special Education (CASE)** presented an overview of issues concerning discipline and suspension. The presentation addressed the following issues:

- Least restrictive environments
- 0% rejection of children
- Focus on positive behavior supports
- On-going training for everyone
- Reduced out-of-school suspension rates
- Incentives needed to work together with private providers, mental health and law enforcement

- Children will get education services even if mental health services, for example, are not being obtained

Rep. Glazier stated that the October agenda would have mental health professional.

Rep. Wiley stated pull-out facilities must be funded by mental health and education.

**Doug Punger, Attorney, Winston-Salem/Forsyth County School System, and Sam Dempsey, Director of Exceptional Children Services for the Winston-Salem /Forsyth County Schools** presented an overview of issues concerning House Bill 1032. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- Frustrated with the current mental health relationship with the Board of Education
- Putting this in place at a local level is challenging
- Team training in every school
- Until 1999, the state paid (DHHS) for training
- Now all LEA's are scrambling to get their people trained
- Approximately 7,000 people to train

Rep. Glazier requested 1999 allocations for the next meeting.

The next meeting was called for November 16, 2006 at 1:00.

**There being no further business, Chairman Glazier adjourned the meeting at 4:00 p.m.**

Respectfully submitted,

---

Representative Rick Glazier  
Chair

---

Carin Savel  
Committee Assistant

**MINUTES**  
**HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH**  
**DISABILITIES**

October 24, 2006

**The House Select Committee on the Education of Students with Disabilities** met on Thursday October 24, 2006, in Room 544 of the Legislative Office Building at 1:00 PM. The following members were present: Chairman Rick Glazier and Members: Rep. Larry Bell, Rep. Arlie Culp, Rep. Maggie Jeffus, and Rep. Laura Wiley. Shirley Iorio, Adam Levinson and Drupti Chauhan Committee Staff, were in attendance. A Visitor Registration list is attached and made part of these minutes.

**Chairman Glazier** called the meeting to order and introduced the Sergeant-At-Arms.

**Discipline Issues**

**Mary Watson, Director, Exceptional Children Division, DPI**, presented an overview of IDEA discipline provisions. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- Short-term removals
- Services continue during removal
- Must have FAPE (Free Appropriate Public Education)
- Notice of decision to move
- Manifestation Determination Timeline
- New manifestation Determination Standard
- Develop BIP (Behavioral Intervention Plan)
- Removal for 45 days
- What is considered serious bodily injury
- Protections for children not identified
- Exceptions to LEA's basis of knowledge of a disability
- Hearing Rights
- Expedited due process hearing
- State's authority
- Hearing officer authority
- Positive Behavior Support
- Reinforces clear behavioral expectations
- Behavior supports work because they decrease suspensions and expulsions
- Schools can suspend regular students without providing educational services; EC kids get educational services during suspension

**Considerations and Recommendations**

- Year-round help for students and parents
- Are students allowed to be graded for work completed at home while suspended
- Do students receive grades while suspended

- Can school districts use a power point presentation for training
- School Board Association might be concerned with mandatory training, but optional training would be accepted
- Can teacher's 5-days be added back in to the year for staff development and training

**Connie Hawkins, Director, Exceptional Children Assistance Center**, presented a overview of discipline issues. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- What is an EC student
- Broad base of children
- IDEA 2004 must serve as foundation
- Move towards intervention and instruction, and away from discipline
- Need more resources; more commitment
- Preventative measures
- Good behavior plans that address children that don't read
- Homebound services in relation to testing
- Home guidance
- Getting inter-agencies involved in services
- No Child to Nowhere Law

**Ellen Russell, Special Needs Federation, Director of Advocacy and Chapter Services, the Arc of North Carolina**, presented a overview of discipline issues. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- IDEA has an obligation to do what is best for the children; protect them
- Parents and teachers must be more aware of triggers of behavior
- Appropriate student placement
- Standards of unidentified students be included in IDEA procedures
- Must exceed IDEA standards
- Homebound services used only when medically necessary
- Avoid the need to interrupt child's education

**Christine Trottier, Interim Co-Director, Carolina Legal Assistance**, presented an overview of discipline issues. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- Three areas to consider
- Unidentified students
- Manifestation Determination Review (MDR)
- Disciplinary Stay-put

**Professor Jane Wettach, Director, Children's Education Law Clinic, Duke University**, presented an overview of discipline issues. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- Long-term suspensions have had an overwhelmingly negative impact on children
- Supports anything that reduces suspensions
- Homebound placements should be the exception, not the rule
- Cases should be reviewed monthly
- State should set standard of homebound education of not less than 8 hours per week

### **Update on House Bill 1032**

**Allison Schafer, Director, North Carolina School Boards Association**, presented an update. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- Training sessions conducted in school districts
- Monthly newsletter information going to 75 school districts
- Policy update
- New Regulations
- Most Boards of Education are responding quickly

**Bill Trant, Executive Director, Exceptional Children, New Hanover County Schools** presented an update. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- Training components
- Implementation of training in New Hanover County
- Buses, Books and Behavior
- Core group of trainers (5-10 staff members)
- Working on this issue prior to the HB 1032 being passed
- Cost is \$0.75 per student

**Jeff Larson, Director of Secondary Special Education Programs, Wake County**, presented an update. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- Wake County report on training
- Created a CD for training purposes
- All Wake County teachers must participate in training, as per HB 1032
- CPI (Crisis Prevention Intervention)
- Life Space Crisis Intervention
- Cost is \$1.00 per student, including start-up costs
- Training not offered in School of Education (colleges and universities) yet

**Mary Watson, Director, Exceptional Children Division, DPI,** presented an update. The presentation addressed the following issues:

- Behavioral specialists in training
- LEA's are training trainers
- Prevention measures included in training
- 2-3 days of training, including review components

### **Committee Recommendations**

- Have staff create a list of recommendations for discipline and disproportionality
- Appropriation for Positive Behavioral Modification position
- Funding for LEA's to provide training
- Legislation concerning school calendar days re-examined
- Define elementary school suspension issue
- How to deal with data v disproportionality
- Virtual learning for homebound students
- What we don't want to conform to in IDEA
- Policy issues: conform or not conform
- Resource allocation issues

The next meeting was called for November 16, 2006 at 1:00.

**There being no further business, Chairman Glazier adjourned the meeting at 3:42p.m.**

Respectfully submitted,

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Representative Rick Glazier  
Chair

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Carin Savel  
Committee Assistant

**MINUTES**  
**HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH**  
**DISABILITIES**

November 16, 2006

**The House Select Committee on the Education of Students with Disabilities** met on Thursday November 16, 2006, in Room 544 of the Legislative Office Building at 1:12 PM. The following members were present: Chairman Rick Glazier, Vice Chairs Jean Farmer-Butterfield and Jean Preston, and Members: Rep. Arlie Culp, Rep. Edith Warren, Rep. Laura Wiley, Rep. Linda Johnson and Rep. Earline Parmon. Dr. Shirley Iorio, Adam Levinson and Drupti Chauhan, Committee Staff, were in attendance. A Visitor Registration list is attached and made part of these minutes.

**Chairman Glazier** called the meeting to order and introduced the Sergeant-At-Arms.

**Minutes were unanimously approved.**

**Medicaid Issues**

**Rick Jacobs, Principal, Fairbanks, LLC**, presented an overview of Medicaid issues and recommendations. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- Medicaid revenues
- How to receive full benefits
- Fee for Service Program (FFS)
- Medicaid Administration Program (MAC)

**Considerations and Recommendations**

- Random Moment Time Study (RMTS)
- State should consider RMTS for MAC claiming
- Interpretation and implementation of CMS MAC Guidelines
- State should reconsider its interpretation of the effect of FFS participation on MAC reimbursable activities to be more consistent with other states
- Physician Authorization
- State should consider amending the physician authorization requirements for the LEA's to utilize the federal standard.
- Expansion of covered services
- State should expand Medicaid covered services to include Health Aide Services, Nursing, Social Work Services and Transportation Services

**Sam Dempsey, Division Director, Exceptional Children, Winston-Salem/Forsyth County Schools**, presented an overview of Medicaid state comparisons. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- NC Plan is now too restrictive; cannot access federal funds
- Most common services are Speech Pathology, Physical Therapy and Occupational Therapy
- NC allows the fewest billable services, and restricts those they do allow
- NC can, at least, reasonably bill what is commonly billed in other states
- Every other state must write its own Medicaid plan and have it approved

### **Considerations and Recommendations**

- Is it a legislative prerogative to order changes
- Resolution of support or encouragement is not the most expedient way of making necessary changes
- Tension exists to provide Medicaid services in an educational environment
- Services are seen as medical, by the medical community
- Counseling services are not available in NC, but they should be considered
- Top choices for changes are:
  - Adding school nurses
  - Case management
  - One-on-one services

**Tara Larson, Assistant Director, Clinical Policies and Programs, DMA, DHHS,** presented an overview of school-based Medicaid issues. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- Advisory groups formed to look at Medicaid in schools
- Federal participation must be present
- Each LEA must certify the CPE
- FFS covered services
- Case management implementation
- MAC program not approved by CMS; still pending

### **Considerations and Recommendations**

- Moving forward
- CMS guidance for plans
- CMS monitoring of what other states are currently doing
- Examining audits from other states
- What procedures are already in place in schools
- No legislative action necessary to move forward—*if* they do move forward
- Target is to get nurses services in place by July 2007
- Medicaid would cover costs currently already funded for nurses
- Counseling services (and other services) are not being targeted for July 2007
- RMTS; changes will be looked at
- Physicians Authority; no move to go forward with other types of services
- Nursing services meeting next week
- Physicians Authority Advisory Group meeting outcome will be reported to the Special Ed Committee
- Committee will undertake the dimension of recommendations

## **Memorandum of Understanding (MOU) for Due Process Hearings**

**Judge Butch Elkins, Administrative Law Judge, Office of Administrative Hearings,** presented an overview of Memorandum of Understanding (MOU) for Due Process Hearings. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- All parties have come to an agreement
- Tie IDEA to goals of national level
- Focus on the child, not only on IDEA, but on fair due process for both the school and the parents
- Parents and school system are equally important
- Commitment to fairness
- Reached an agreement without abandoning the focus on the child

**Mary Watson, Director, Exceptional Children Division, DPI,** discussed the agreement of the Memorandum of Understanding (MOU) for Due Process Hearings.

- Re-learning of due process
- Keeping the focus on the child
- All agree on the MOU
- Continue to have discussions and meetings to streamline the process as they move forward

**Chris Campbell, Chair, NC Council of School Attorneys (NCCOSA),** discussed the agreement of the Memorandum of Understanding (MOU) for Due Process Hearings.

- School attorneys are pleased with the MOU
- North Carolina is now the national model

## **Tax Credit for Children with Special Needs**

**Representative Paul Stam, NC General Assembly,** presented an overview of Bill Draft 2007-LY-2 [v.3], A BILL TO BE ENTITLED AN ACT TO ALLOW AN INDIVIDUAL INCOME TAX CREDIT FOR PART OF THE EXPENSE OF A VOIDED PUBLIC EDUCATION FOR CHILDREN WITH SPECIAL NEEDS WHO REQUIRE SPECIAL EDUCATION AND RELATED SERVICES OUTSIDE THE REGULAR CLASSROOM AND TO AUTHORIZE COUNTIES TO APPROPRIATE FUNDS FOR THESE CHILDREN EDUCATED OTHER THAN IN PUBLIC SCHOOLS. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- Provides a \$6K yearly credit to taxpayers who have children with special needs
- \$3K per semester allowance
- Students must be lawfully educated outside of public schools

- Refundable credit; available even if parents don't pay income tax
- Not a tax bill, not an appropriations bill; saves more than it costs

**Leslie Petrick, parent of a special needs child,** testified.

- Has a child who cannot speak, in a classroom setting in public school
- Child has school aide; costs approximately \$18-22K annually
- Does not receive appropriate education; bill would help

### **Committee Discussion**

- Number of families affected by this situation is approximately 4% of all students that would be eligible
- Michael Hauser, NCAE, expressed concerns about the bill
- Leanne Winner, NC School Board Assoc, stated they will keep an open mind about the bill and report back
- Mary Watson stated there is currently no mandate for private schools to provide special education services
- Rep. Stam stated he would welcome any further suggestions

### **Committee Recommendation**

- Rep. Glazier cited that text books and teacher editions books are still not in the classrooms
- Rep. Glazier directed the GA staff to correspond with State Board staff to show cause authority:
  - specific policy directed into state policy directing textbooks and teacher edition books be made available in classrooms
  - correspondence with LEA's to ensure this state mandate is being met

### **Possible Recommendations for the House Select Committee on the Education of Students with Disabilities**

1. Provide DPI a position to support and coordinate Positive Behavior Support training and Response to Intervention initiative *and additional funding.*  
**Motion by Rep. Farmer-Butterfield, second by Rep. Preston. Passed.**
2. Provide salary supplement for special education teachers.  
**Motion by Rep. Farmer-Butterfield, second by Rep. Johnson to endorse the recommendations, refer to Appropriations/Education Sub Com. Passed.**
3. Define homebound instruction and develop standards for when it is used in disciplinary context.
  - a. Standards for homebound services:
    - i. No child should be assigned to homebound placement without determination that it is least restrictive alternative placement.

- ii. Following child's placement in homebound setting, the child's IEP team must meet to determine the duration, frequency and nature of the educational services to be provided to the child.

**Motion by Rep. Johnson, second by Rep. Wiley. Passed.**

- b. Educational services shall at a minimum include:
  - i. No fewer than 8 hours of instruction per week by qualified special education teacher
  - ii. Related services included in child's IEP
  - iii. Behavior intervention services designed to address the behavior violation that caused the disciplinary exclusion so that it does not occur again
  - iv. Following child's placement in homebound setting, the child's IEP team must meet once per month to evaluate the continued appropriateness of the homebound setting

**Tabled until telephone discussion with GA staff and DPI**

- c. Implement behavior intervention services appropriate to the change of placement to least restrictive settings that are designed to address the behavior that led to the discipline.

**Tabled.**

- 4. Define "interim alternative education setting".

**Tabled.**

- 5. Only use homebound services in medical cases.

**Off the agenda.**

- 6. Direct the State Board of Education to develop a training program for faculty and staff explaining the dual system of discipline for students and mandate that this training be shown to faculty and staff at the beginning of every school year. This can be delivered through distance learning, Power point presentations etc., *but not a mandate.*

**Motion by Rep. Glazier, second by Rep. Farmer-Butterfield. Passed.**

- 7. Amend the current calendar law to add professional development days.

**Hold until December meeting.**

- 8. Mandate that elementary schools may not have more than one suspension day at a time for elementary school students.

**Off the agenda.**

- 9. Require that all students be provided educational services when they are suspended or expelled.

**Tabled until discussion with GA staff, Rep. Warren, Rep. Wiley, Leanne Winner, and Sam Dempsey.**

10. For disciplinary removals, require a minimum number of hours a week of instruction to enable the child to progress in the general curriculum.  
**Off the agenda.**
11. Address the lack of appropriate placements within the State for children with serious emotional disabilities.  
**Motion by Rep. Glazier, second by Rep. Johnson to refer to Education Committee K-12. Passed.**
12. Address the need for additional certified staff to teach students with emotional and behavioral disabilities.  
**Tabled until December meeting; DPI must create 1-2 legislative draft actions to address the shortage.**
13. Require LEAs to report trend data on disproportionality.  
**Motion by Rep. Preston, second by Rep. Wiley. Passed.**
14. Direct LEAs to provide the opportunity to use virtual learning for homebound students.  
**Set aside.**
15. Determine whether or not the State should adopt the federal disciplinary standards or keep the current discipline protections.  
**Tabled until December meeting.**
16. Require culturally competent/culturally responsive training in teacher preparation programs and in certificate renewal.  
**Tabled until December meeting.**
17. Require Division of Exceptional Children at DPI to study the most appropriate age or grade span to identify children as needing special education.  
**Tabled.**

The next meeting was called for December 12, 2006 at 1:00.

**There being no further business, Chairman Glazier adjourned the meeting at 4:33p.m.**

Respectfully submitted,

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Representative Rick Glazier  
Chair

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Carin Savel  
Committee Assistant

**MINUTES**  
**HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH**  
**DISABILITIES**

December 12, 2006

**The House Select Committee on the Education of Students with Disabilities** met on Tuesday December 12, 2006, in Room 544 of the Legislative Office Building at 1:10 PM. The following members were present: Chairman Rick Glazier, Vice Chair Jean Preston, and Members: Rep. Arlie Culp, Rep. Edith Warren, Rep. Laura Wiley, Rep. Linda Johnson and Rep. Larry Bell. Dr. Shirley Iorio, Adam Levinson and Drupti Chauhan, Committee Staff, were in attendance. A Visitor Registration list is attached and made part of these minutes.

**Chairman Glazier** called the meeting to order and introduced the Sergeant-At-Arms.

**Minutes were unanimously approved.**

**Medicaid Status Report**

**Tara Larson, Assistant Director, Clinical Policies and Programs, DMA, DHHS,** presented a Medicaid status update. The presentation addressed the following issues:

- Group that examines adding nurses services met and came to an agreement.
- They submitted a draft to CMS.
- They will hold a follow-up conference call next week
- Official draft will follow
- They are presenting to physicians on Dec 14

**Textbook Funds**

**Mary Watson, Director, Exceptional Children Division, DPI,** presented an update on textbook funding. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- They have notified the LEA's of changes regarding textbooks Keeping the focus on the child
- They sent a letter and an email to superintendents to notify change
- Announced to finance officers they are required to use funding for teachers/student textbooks
- Sent newsletter (attached)

**Committee Discussion**

- How do teachers know they are supposed to order textbooks?
- Message seems to get to administration, but not to teachers
- Can department heads be notified?

- There is no statute concerning notification; must be done on a local level
- Can be sent out in the bi-weekly newsletter
- Mary Watson will send the information the EC directors and ask them to get the information regarding textbook ordering to teachers

### **Residency Issues**

**Leanne Winner, Director of Governmental Relations, North Carolina School Boards Association** presented an overview of residency issues. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- A child may only have one domicile
- A child's residence is where the child is living, regardless of where parents reside
- Current dual admission standard creates problems
- 'Resides' is not defined anywhere
- In other states, there is no different admission standard for EC and regular students
- NCBCSA and NCCSOA believe all children should be treated the same for admission and residency
- New definition of residency needs to be added (see handout):
  - 115C-1063: which would read: (19) "Residence" or "resides"— For purposes of this Article a student who "resides" in a school district and is therefore entitled to the special education services provided for in this Article means those students qualified for admission to school in a school administrative unit pursuant to N.C. Gen. Stat. Section 115C-366.
- They can create a 'grandfather' clause for those EC's affected by new definition

### **Drupti Chauhan, Committee Staff Attorney:**

- General Assembly clarified school procedures
- Legal guardian must retain legal liability
- Staff agrees with the new definition

### **Linda Gunter, NCAE:**

- NCAE has not taken an official position, but would probably support this

### **Mary Watson, Exceptional Children Division, DPI :**

- DPI will further investigate definition

### **Melinda Chambers, NC CASE:**

- In favor of the proposal
- Legal guardian must retain legal liability
- Staff agrees with the new definition

### **Committee Discussion**

- Does the proposal cover children in group homes and foster care? Yes
- Staff is directed to look at grandfather clause language and look into local districts being able to work out the residency issues themselves.

*Motion made by Rep. Johnson, second by Reps. Warren and Wiley to accept the proposal of the definition change. PASSED unanimously .*

### **Follow-up to various Information Requests**

#### **Mary Watson, Director, Exceptional Children Division, DPI:**

- Data regarding preschool kids with disabilities
- There is no More-at-Four data on this issue
- She will find out why there is no data available

**Ira Wolfe, DPI**, presented an overview of private school services. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- Number of students
- Colored sheets show each LEA
- There is a funding formula (federal) concerning the amount to be spent and services offered (will send forth a copy of this formula)
- There is a difference in services because of the funding formula
- Each school determines what services they will provide.

**Bobbie Grammer, DPI**, presented an overview of hospital/homebound settings. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- Homebound placements should be considered temporary
- Goal is to allow child back into school within the year
- Some of the children may be homebound for short periods of time and may not come up on the 'child count'
- Homebound placement can be for any category of disability
- Minimum number of hours required is difficult to determine, as some students are not well enough for maximum hours of service

### **Committee Recommendations:**

- The Committee recommends that the House Education Subcommittee on Pre-school, Elementary, and Secondary Education of the 2007 General Assembly (House Education K-12 Subcommittee) examine and discuss the availability of appropriate alternative placements within the State for children with serious emotional disabilities. In addition, the Committee recommends that the House K-12 Subcommittee identify and develop strategies and legislation to provide for

funding and resources for appropriate alternative placements for children with serious emotional disabilities.

**Motion by Rep. Wiley, second by Rep. Culp to adopt. PASSED unanimously.**

- Short Title: Online Instruction/Suspended/Expelled Students. *(draft attached)*  
A BILL TO BE ENTITLED AN ACT to implement a recommendation of the House Select Committee on the Education of Students with Disabilities to require the State Board of Education to develop guidelines to provide online instruction for students who are suspended or expelled for more than ten days and to establish a pilot program.

**Motion by Rep. Wiley, second by Rep. Bell to adopt. PASSED unanimously.**

- Short Title: Alternative Progs./Students with Disabilities *(draft attached)*  
A BILL TO BE ENTITLED AN ACT to implement a recommendation of the House Select Committee on the Education of Students with Disabilities to require the State Board of Education to establish a pilot program to create appropriate alternative programs for students who are suspended or expelled for more than ten days, including students with disabilities who have discipline issues.

**Motion by Rep. Johnson, second by Rep. Bell to add an Appropriations for Pilots to be capped at \$5 million for two years. PASSED unanimously.**

- Short Title: Recruitment & Retention/Special Ed Teachers. *(draft attached)*  
A BILL TO BE ENTITLED AN ACT to implement a recommendation of the House Select Committee on the Education of Students with Disabilities to provide an incentive to recruit and retain certified staff to teach autistic students and students with emotional and behavioral disabilities.

**Referred to special subcommittee, Chair Rep. Warren to meet via telephone with Reps. Wiley and Johnson, NC CASE, NCAE, NCSBA, and DPI and report at December 19 meeting.**

- Short Title: Study/Teacher Preparation Programs. *(draft attached)*  
A BILL TO BE ENTITLED AN ACT to implement a recommendation of the House Select Committee on the Education of Students with Disabilities to direct the Board of Governors of the University of North Carolina to report on the efficacy of the preparation of teachers to teach students with disabilities

**Motion by Rep. Bell, second by Rep. Wiley to adopt. PASSED unanimously.**

- Short Title: Homebound Instruction Standards. *(draft attached)*  
A BILL TO BE ENTITLED AN ACT to implement a recommendation of the House Select Committee on the Education of Students with Disabilities to establish standards for homebound instruction.

**Tabled. Chairman Glazier reserves the right to re-visit.**

- Short Title: Homebound Instruction for Disabled Students. *(draft attached)*  
 A BILL TO BE ENTITLED AN ACT to implement a recommendation of the House Select Committee on the Education of Students with Disabilities to provide homebound instruction for discipline purposes when it is the least restrictive alternative for students with disabilities and to require a regular evaluation of the appropriateness of the homebound instruction.  
**Motion by Rep. Warren, second by Rep. Bell to adopt. PASSED**  
**unanimously.**
- Short Title: Teacher Training on Dual Discipline System *(draft attached)*  
 A BILL TO BE ENTITLED AN ACT to implement a recommendation of the House Select Committee on the Education of Students with Disabilities to require the State Board of Education to develop a training program for teachers and school personnel on the dual system of discipline and to require local boards of education to implement the training program on the dual system of discipline.  
**Motion by Rep. Preston, second by Rep. Bell to adopt. PASSED**  
**unanimously.**
- Short Title: Txtbks & Assignmtns on Short Term Suspension *(draft attached)*  
 A BILL TO BE ENTITLED AN ACT to implement a recommendation of the House Select Committee on the Education of Students with Disabilities to allow students placed on short term suspensions to take their textbooks home for the duration of the short term suspension and to have access to homework assignments.  
**Motion by Rep. Bell, second by Rep. Warren to adopt. PASSED**  
**unanimously.**
- Short Title: Study Serv. for Students w/Disabilities in High School *(draft attached)*  
 A BILL TO BE ENTITLED AN ACT to implement a recommendation of the House Select Committee on the Education of Students with Disabilities to require The Department of Public Instruction to study the delivery of educational and other services to students with disabilities at the high school level and report to the Joint Legislative Education Oversight Committee.  
**Motion by Rep. Wiley, second by Rep. Bell to adopt. PASSED**  
**unanimously.**
- Short Title: Resolution for Medicaid Assistance *(draft attached)*  
 A HOUSE RESOLUTION encouraging the division of medical assistance of the North Carolina Department of Health and Human Services to move expeditiously to seek Medicaid reimbursement for local school administrative units' administration of the school based Medicaid fee-for-service program.  
**Motion by Rep. Warren, second by Rep. Wiley to adopt. PASSED**  
**unanimously.**

**Adam Levinson, Committee Staff**, presented possible recommendations for the House Select Committee on the Education of Students with Disabilities. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

1. Provide DPI a position to support and coordinate Positive Behavior Support Statewide:

➤ Option 1: Create the position using federal administrative funding (as funding for IDEA increases, this funding increases ~~—there will be more funding in FY 2007-08.~~ This would not require a general fund appropriation, but could be established in the 2007-08 budget as a receipt supported position (see 2006 Joint Conference Committee Report, page F-4, item 26).

➤ Option 2: Create the position using State general fund dollars. This would require the following recurring expansion item in the 2007-08 budget:

The sum of \$94,830 is appropriated to the Department of Public Instruction to establish the Positive Behavior Support (PBS) Coordinator position. The Coordinator will support and coordinate Statewide training in PBS and the Response to Intervention initiative.

**Motion by Rep. Glazier, second by Reps. Preston, Bell, and Wiley to adopt Option 2. PASSED unanimously.**

2. Endorse concept of a salary supplement for special education teachers; send to Ed Oversight:

➤ Whereas many local administrative units experience extreme difficulty in hiring qualified special education teacher; and

Whereas turnover rates are particularly high for special education teachers; and

Whereas...anything else the Committee would like to highlight as justification;

Therefore the House Select Committee on the Education of Students with Disabilities suggests that the Joint Legislative Education Oversight Committee consider recommending that the 2007 General Assembly appropriate recurring expansion funds to support a new State salary supplement for special education teachers. The supplement should be substantial and should be awarded based on criteria developed in consultation with the State Board of Education.

**Referred to Special Subcommittee, Chair Warren, to meet telephonically and discuss a solution. Will report at December 19 meeting.**

16. AN ACT TO APPROPRIATE FUNDS FOR CHILDREN WITH SPECIAL NEEDS

SECTION 1: There is appropriated from the General Fund to the State Board of Education for children with disabilities the sum of nine million nine hundred eighty-one thousand seven hundred seventy-six dollars (\$9,981,776) for the 2007-2008 fiscal year in order to increase the per child with disabilities allocation.

SECTION 2: This act becomes effective July 1, 2007.

*[This would fund the remainder of the expansion requested in 2006-07 in HB 1966 and increase the per student supplemental funding factor by \$57.48 based on a projected funded headcount of 173,645. The new funding factor would be \$3,215.03]*

**Motion by Rep. Wiley, second by Rep. Warren to adopt. PASSED unanimously.**

**Remaining Possible Recommendations to be Discussed**

- Amend the current calendar law to add professional development days (in part or in whole). Staff will work on the proper wording.  
**Motion by Rep. Bell, second by Rep. Warren to adopt. PASSED 3-1 with Reps. Bell, Warren and Glazier in favor and Rep. Wiley opposed.**
- Determine whether or not the State should adopt the federal disciplinary standards or keep the current discipline protections (new IDEA 'stay-put' provisions).  
**Committee decided not to proceed with this.**
- Require culturally competent/culturally responsive training in teacher preparation programs and in certificate renewal (refer to draft 2007-SFz-5 [v.1])  
**No motion made as to this recommendation.**

The next meeting was called for December 19, 2006 at 1:00.

**There being no further business, Chairman Glazier adjourned the meeting at 4:18p.m.**

Respectfully submitted,

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Representative Rick Glazier  
Chair

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Carin Savel  
Committee Assistant

**MINUTES**  
**HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH**  
**DISABILITIES**

December 22, 2006

**The House Select Committee on the Education of Students with Disabilities** met on Tuesday December 19, 2006, in Room 422 of the Legislative Office Building at 1:00 PM. The following members were present: Chairman Rick Glazier, Vice Chair Jean Preston, and Members: Rep. Arlie Culp, Rep. Edith Warren, Rep. Laura Wiley, Rep. Linda Johnson, Rep. Maggie Jeffus, and Rep. Larry Bell. Dr. Shirley Iorio, Adam Levinson, Kara McCraw, and Drupti Chauhan, Committee Staff, were in attendance. A Visitor Registration list is attached and made part of these minutes.

**Chairman Glazier** called the meeting to order and introduced the Sergeant-At-Arms.

**Minutes were unanimously approved.**

**State Board of Education Expansion Budget Request**

**Philip Price, Associate Superintendent, Financial and Business Services, NC Department of Public Instruction** presented an overview of budget request:

- Request is based on the assumption that it takes 2.3-2.5% more to fund special education programs than regular programs
- \$10-15 million in additional funding is requested every year
- Backing for the request has always been a difficult task
- This year the SBOE has asked for \$25 million in additional funding
- Their recent report did not prioritize this request

Representative Glazier reminded the Committee that they were recommending a ten million dollar increase in special education funding. The Committee discussed the importance of consistency in the request for additional funds.

***Motion made by Rep. Jeffus, second by Rep. Preston to support a \$25 million increase in funding for special needs students, instead of the \$10 million previously requested. PASSED unanimously.***

**Committee Discussion**

**Draft Legislation**

- Short Title: Homebound Instruction Standards (*draft attached*)  
A BILL TO BE ENTITLED AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH

DISABILITIES TO ESTABLISH STANDARDS FOR HOMEBOUND INSTRUCTION.

***Motion made by Rep. Wiley, second by Rep. Warren to add language on line 20/section (5a) to say, ‘outside the school setting’ and adopt. PASSED unanimously.***

- Short Title: Positive Behavior Support Coordinator (*draft attached*)  
A BILL TO BE ENTITLED AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO ESTABLISH A POSITIVE BEHAVIOR SUPPORT COORDINATOR POSITION AT THE DEPARTMENT OF PUBLIC INSTRUCTION AND APPROPRIATE FUNDS FOR THE POSITION.

***Motion made by Rep. Warren, second by Rep. Jeffus to adopt. PASSED unanimously.***

- Short Title: Funds for Children with Disabilities (*draft attached*)  
A BILL TO BE ENTITLED AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO INCREASE THE PER CHILD WITH DISABILITIES ALLOCATION.

***Motion made by Rep. Jeffus, second by Rep. Preston to add language on line 7 to say, ‘the sum of \$25 million’ and adopt. PASSED unanimously.***

- Short Title: Define Residence for Student w/Special Needs (*draft attached*)  
A BILL TO BE ENTITLED AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO CLARIFY THE DEFINITION OF RESIDENCE FOR THE DELIVERY OF SPECIAL EDUCATION SERVICES.

***Motion made by Rep. Culp, second by Rep. Bell to adopt. PASSED unanimously.***

- Short Title: Stdnts Ineligible for Spec. Ed./Protection (*draft attached*)  
A BILL TO BE ENTITLED AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO ADD A PROTECTION FOR CHILDREN NOT DETERMINED ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.  
*Staff will check “parents refusal of special education”.*

***Motion made by Rep. Bell, second by Rep. Preston to adopt. PASSED unanimously.***

- Short Title: Add Professional Development Days to Sch Cal. (*draft attached*)  
A BILL TO BE ENTITLED AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO ADD FIVE PROFESSIONAL DEVELOPMENT DAYS FOR TEACHERS.

***Motion made by Rep. Bell, second by Reps. Johnson and Warren to adopt. PASSED.***

**Rep. Warren** presented a report from the subcommittee on Education of Students with Disabilities. A copy of the report is attached and made part of these minutes. The presentation addressed the following issues:

- Salary is not the only issue that concerns teachers
- Help with activities and responsibilities is critical
- Keeping morale up
- Creating a better work environment
- “Need Coordinating Teachers”
- Increase teaching fellowships
- Scholarships

### **Retention**

- Teacher Level Position "Coordinating Teacher"
  - 1 per school or based on ADM
  - Reallocate existing resources from ADM

***Motion made by Rep. Warren, second by Rep. Johnson to include these recommendations in the committee report, refer to Appropriations Subcommittee on Education and ask them to review this for funding. PASSED unanimously.***

### **Recruitment**

- Teaching Fellowships
- Other Scholarships
- LEA's be required to notify high schools, colleges and universities about the existence of fellowships

***Motion made by Rep. Warren, second by Rep. Wiley to include these recommendations in the committee report, refer to Appropriations Subcommittee on Education to review the Future teachers of North Carolina Scholarship Loans awarded for 2006-2007 to see if they are being utilized fully, consider increasing the number of scholarships, examine the breakdown of how the majority of scholarships are being used, and determine whether a certain numbers should be designated for special education teachers. PASSED unanimously.***

### **Research**

- Issue of Loan Forgiveness
- See how much money we would need to increase scholarships
- Staff will research costs

***Motion made by Rep. Glazier, second by Reps. Preston and Warren to include these recommendations in the committee report, refer to Education Subcommittee K-12 at the start of session, and ask them to examine and discuss issues of loan forgiveness and tuition reimbursement in order to be prepared to have legislation drafted for the 2007 Session. PASSED unanimously.***

## **Ad Hoc Academic Rigor, Relevance and Relationships Comm. Report**

**Dr. Rebecca Garland, Executive Director, State Board of Education**, presented an overview of the Ad Hoc Academic Rigor, Relevance and Relationships Committee report. A copy of the presentation is attached and made part of these minutes. The presentation addressed the following issues:

- Must prepare students for the 21<sup>st</sup> century
- Students and parents have to be ‘at the table’
- Parents must be apprised of their children’s situations
- Parents will be part of the decision-making process
- The Core Course of Study
  - The Core (17 units)
    - 4 units of English
    - 4 units of Mathematics
    - 3 units of Science
    - 3 units of Social Studies
    - 2 units of a Second Language
    - 1 unit of Health/Physical Education
  - Endorsements (Requires at least 4 units in one area)
    - Career-Technical Education
    - Arts Education
    - JROTC
    - Advanced Placement/IB
    - Second Language
    - Other
- Endorsements
- Gear toward allowing students to excel to the highest level of their ability

## **Committee Discussion**

### **Draft Final Report**

***Motion made by Rep. Warren, second by Rep. Wiley, to adopt the Final Report. The Report will reflect unresolved issues in committee, refer these issues to the House Education Committee for hearing or re-referral to Education Subcommittee K-12, and will authorize staff to make necessary changes. PASSED unanimously.***

**There being no further business, Chairman Glazier adjourned the meeting at 3:40 p.m.**

Respectfully submitted,

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Representative Rick Glazier  
Chair

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Carin Savel  
Committee Assistant

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# **Committee Recommendations**

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## **Recommendations of the Committee**

1. The Committee recommends that the House Education Subcommittee on Pre-school, Elementary, and Secondary Education of the 2007 General Assembly (House Education K-12 Subcommittee) examine and discuss the availability of appropriate alternative placements within the State for children with serious emotional disabilities. In addition, the Committee recommends that the House K-12 Subcommittee identify and develop strategies and legislation to provide for funding and resources for appropriate alternative placements for children with serious emotional disabilities.
  
2. The Committee recommends that the Department of Public Instruction and the local school administrative units (LEA), through the Exceptional Children Directors, notify appropriate counselors in each local school system and appropriate institutions of higher education regarding the existence of the Future Teachers of North Carolina Scholarship Loan and its availability to future teachers of special education. LEA counselors and university teacher preparation program faculty should inform students about the scholarship loans and encourage them to apply for the scholarship loans.
  
3. The Committee recommends that the House Appropriations Subcommittee on Education of the 2007 General Assembly examine information, when it becomes available, on the total number of Future Teachers of North Carolina Scholarship Loans awarded for the 2006-07 year and the areas of study in which the scholarship loans were awarded. If the scholarship loans are fully utilized, the Committee further recommends the House Appropriations Subcommittee on Education examine and discuss an expansion of the number of scholarships authorized annually. In addition, the Committee recommends the House Appropriations Subcommittee on Education examine and discuss whether certain of the scholarship loans should be designated solely for future teachers of special education.
  
4. The Committee recommends that the House Education Subcommittee on Pre-school, Elementary, and Secondary Education of the 2007 General Assembly (House Education K-12 Subcommittee) examine and discuss the issues of loan forgiveness and tuition reimbursement for special education teachers in order to improve recruitment and retention. The Committee recommends that the House K-12 Subcommittee:
  - Identify possible terms and conditions of loan forgiveness programs for special education teachers who have recently graduated from teacher preparation programs;
  - Consider terms and conditions for tuition reimbursements for lateral entry special education teachers and other teachers who decide to obtain an additional certification in special education; and
  - Discuss additional incentives if the special education teachers participating in loan forgiveness programs or receiving tuition reimbursement teach in local school administrative units located in high poverty areas of the State.

5. The Committee recommends that the Joint Legislative Appropriations Subcommittee on Education (JLASE) consider directing local administrative units (LEAs) to create Exceptional Education Coordinating Teacher (EECT) positions that will support exceptional education classroom teachers by performing the following functions:

- Coordinating development and implementation of Individualized Educational Plans (IEPs)
- Identifying community resources
- Coordinating communication with parents
- Coordinating student transportation
- Coordinating intake of new students
- Mentoring classroom teachers

The Committee also recommends that the JLASE develop a formula to be used to establish the appropriate number of EECT positions that would be required in each LEA. In developing the formula, the JLASE should consider approaches such as requiring:

- one EECT per some number of students with IEPs in the LEA
- that these positions be "earmarked" from the LEAs State classroom teacher or instructional support position allotments
- that LEAs be required to fund these positions using any State allotments other than Supplemental Funds for Children with Special Needs.

6. The Committee discussed at length the federal government's relaxing of the discipline protections for students with disabilities, particularly the issue of the Standard of Review for Manifestation Determination Reviews. The effect of this change in the recent reauthorization of the federal Individuals with Disabilities Education Act (IDEA) may be that schools can suspend special education students for whom they have failed to provide an appropriate educational program and placement.

This is an issue left unresolved and, therefore, the Committee recommends that the standing House Education Committee discuss and resolve the issue of whether or not to add disciplinary safeguards for special education students to the State statute.

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# **Legislative Proposals**

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**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**H**

**D**

**BILL DRAFT 2007-SFz-8 [v.4] (12/18)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/22/2006 12:01:23 PM**

Short Title: Stdnts Ineligible for Spec. Ed./Protection. (Public)

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Sponsors: Representatives Glazier, Bell, Jeffus, Wiley (Primary Sponsors); and Parmon.

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Referred to:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT  
3 COMMITTEE ON EDUCATION OF STUDENTS WITH DISABILITIES TO  
4 ADD A PROTECTION FOR CHILDREN NOT DETERMINED ELIGIBLE FOR  
5 SPECIAL EDUCATION AND RELATED SERVICES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 115C-107.7 reads as rewritten:

8 **"§ 115C-107.7. Discipline.**

9 (a) The policies and procedures for the discipline of students with disabilities  
10 shall be consistent with federal laws and regulations.

11 (b) A local educational agency shall be deemed to have knowledge that a child is  
12 a child with a disability if, before the behavior that precipitated the disciplinary action  
13 occurred, the performance or behavior of the child clearly establishes the need for such  
14 services."

15 **SECTION 2.** This act is effective when it becomes law.



**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**H**

**D**

**BILL DRAFT 2007-SFz-2 [v.8] (11/30)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/22/2006 12:04:52 PM**

Short Title: Alternative Progs./Students with Disabilities. (Public)

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Sponsors: Representatives Glazier, Bell, E. Warren, Wiley (Primary Sponsors); and Parmon.

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Referred to:

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A BILL TO BE ENTITLED

1  
2 AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT  
3 COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO  
4 REQUIRE THE STATE BOARD OF EDUCATION TO ESTABLISH A PILOT  
5 PROGRAM TO CREATE APPROPRIATE ALTERNATIVE PROGRAMS FOR  
6 STUDENTS WHO ARE SUSPENDED OR EXPELLED FOR MORE THAN TEN  
7 DAYS, INCLUDING STUDENTS WITH DISABILITIES WHO HAVE  
8 DISCIPLINE ISSUES.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** The State Board of Education shall establish a pilot program  
11 authorizing up to three local school administrative units to create appropriate alternative  
12 programs to serve students who have been suspended or expelled for more than ten  
13 days, including students with disabilities who have been placed on homebound  
14 instruction for discipline purposes. Appropriate alternative programs may include, but  
15 are not limited to, schools within a school, effective in-school programs, collaborative  
16 Day Treatment and community-based off-site programs.

17 The State Board shall use a competitive grant process to select the pilot units  
18 and shall ensure that, to the extent possible, the selected units are distributed  
19 geographically throughout the State. To be eligible for a grant, a local school  
20 administrative unit shall have the following in place: (i) Positive Behavior Support  
21 programs established in at least 75% of their schools; (ii) Response to Intervention  
22 Problem Solving, Instruction Consultation, or both, at the school system level; and (iii)  
23 school staffs that have been provided the training specified in G.S. 115C-105.47(b) (9).

24 **SECTION 2.** The local school administrative units that are identified to  
25 participate in the pilot shall receive additional State funding to create the alternative  
26 program. The additional funding shall equal 2.2 times 25% of their current State

1 allotment for At-Risk Student Services/Alternative Schools. The units should partner  
2 with their local mental health agency, private providers and other community agencies  
3 to provide the services at the school to help the students improve their behavior and  
4 access Medicaid funds where appropriate.

5 **SECTION 3.** There is appropriated from the General Fund to the State  
6 Board of Education five million dollars (\$5,000,000) for the 2008-2009 fiscal year to  
7 establish a pilot program for up to three local school administrative units to create  
8 appropriate alternative programs to serve students who have been suspended or expelled  
9 for more than ten days.

10 **SECTION 4.** Each participating unit shall collect and report to the State  
11 Board, by grade level, gender and ethnicity, the number of students suspended or  
12 expelled for more than ten days, including students with disabilities placed on  
13 homebound instruction for discipline purposes. This data shall be collected, as a  
14 baseline, for the school year immediately preceding participation in the pilot program  
15 and for the first two years of the pilot.

16 **SECTION 5.** The State Board shall conduct an evaluation of the pilot  
17 program. The evaluation shall include (i) assessment results, (ii) drop out data, and (iii)  
18 graduation rates for all students participating in the pilot, as well as an accounting of the  
19 cost to provide the alternative program and the overall effectiveness of the program. The  
20 State Board shall report the results of the evaluation to the Joint Legislative Education  
21 Oversight Committee by November 15, 2009, and annually thereafter. This report shall  
22 include any recommendations regarding the continuation, expansion or elimination of  
23 the pilot program.

24 **SECTION 6.** This act is effective when it becomes law, and applies  
25 beginning with the 2008-2009 school year.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**H**

**D**

**BILL DRAFT 2007-SFz-1 [v.9] (11/30)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/29/2006 2:59:49 PM**

Short Title: Online Instruction/Suspended/Expelled Stdnts. (Public)

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Sponsors: Representatives E. Warren, Jeffus, Johnson, Farmer-Butterfield (Primary Sponsors); and Parmon.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO REQUIRE THE STATE BOARD OF EDUCATION TO DEVELOP GUIDELINES TO PROVIDE ONLINE INSTRUCTION FOR STUDENTS WHO ARE SUSPENDED OR EXPELLED FOR MORE THAN TEN DAYS AND TO ESTABLISH A PILOT PROGRAM.

The General Assembly of North Carolina enacts:

**SECTION 1.** The State Board of Education shall establish a pilot program authorizing up to three local school administrative units to provide online instruction for students who have been suspended or expelled for more than ten days. The purpose of the pilot is to determine the effectiveness and cost of using online instruction to enable suspended or expelled students to keep current with assignments and avoid losing course credit because of their absence from school. The State Board shall use a competitive grant process to select the pilot units.

Prior to selecting the pilot units, the State Board, in collaboration with up to two local school administrative units and local and State education technology staff, shall develop guidelines for the implementation of online instruction for suspended or expelled students. The State Board shall consider, at a minimum, the feasibility of linking the Virtual High School through the TNN network to local school systems and the cost of providing the necessary technology such as laptops and secure internet access within both urban and rural school systems.

**SECTION 2.** There is appropriated from the General Fund to the State Board of Education the sum of one hundred thousand dollars (\$100,000) to establish a pilot program for up to three local school administrative units to provide online instruction to students who have been suspended or expelled for more than ten days.

1           **SECTION 3.** Each participating unit shall collect and report to the State  
2 Board, by grade level, gender and ethnicity, the number of students, including students  
3 with disabilities, suspended or expelled for more than ten days. This data shall be  
4 collected, as a baseline, for the school year immediately preceding participation in the  
5 pilot program and for the first two years of the pilot.

6           **SECTION 4.** The State Board shall conduct an evaluation of the pilot  
7 program. The evaluation shall include (i) assessment results, (ii) drop out data, and (iii)  
8 graduation rates for the students participating in the pilot, as well as an accounting of  
9 the cost to provide online instruction for suspended and expelled students and the  
10 overall effectiveness of the program. The State Board shall report the results of the  
11 evaluation to the Joint Legislative Education Oversight Committee by September 15,  
12 2009, and annually thereafter. This report shall include any recommendations regarding  
13 the continuation, expansion or elimination of the pilot program.

14           **SECTION 5.** This act is effective when it becomes law, and applies  
15 beginning with the 2008-2009 school year.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**H**

**D**

**BILL DRAFT 2007-RQz-6 [v.8] (12/11)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/22/2006 12:22:55 PM**

Short Title: Homebound Instruction for Disabled Students. (Public)

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Sponsors: Representatives Glazier, Bell, Farmer-Butterfield, Wiley (Primary Sponsors); and Parmon.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO PROVIDE HOMEBOUND INSTRUCTION FOR DISCIPLINE PURPOSES WHEN IT IS THE LEAST RESTRICTIVE ALTERNATIVE FOR STUDENTS WITH DISABILITIES AND TO REQUIRE A REGULAR EVALUATION OF THE APPROPRIATENESS OF THE HOMEBOUND INSTRUCTION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 115C-107.7 reads as rewritten:

**"§ 115C-107.7. Discipline and homebound instruction.**

(a) The policies and procedures for the discipline of students with disabilities shall be consistent with federal laws and regulations.

(b) If a change of placement occurs under the discipline regulations of IDEA, a local educational agency shall not assign a student to homebound instruction without a determination by the student's IEP team that the homebound instruction is the least restrictive alternative environment for that student. If it is determined that the homebound instruction is the least restrictive alternative environment for the student, the student's IEP team shall meet to determine the nature of the homebound educational services to be provided to the student. In addition, the student's IEP team shall continue to meet once per month to evaluate the continued appropriateness of the homebound instruction."

**SECTION 2.** This act is effective when it becomes law.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**H**

**D**

**BILL DRAFT 2007-RQz-5 [v.7] (12/04)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/22/2006 12:24:12 PM**

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Sponsors: Representatives Glazier, Farmer-Butterfield, Johnson, Wiley (Primary Sponsors); and Parmon.

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Referred to:

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1 A HOUSE RESOLUTION ENCOURAGING THE DIVISION OF MEDICAL  
2 ASSISTANCE OF THE NORTH CAROLINA DEPARTMENT OF HEALTH AND  
3 HUMAN SERVICES TO MOVE EXPEDITIOUSLY TO SEEK MEDICAID  
4 REIMBURSEMENT FOR LOCAL SCHOOL ADMINISTRATIVE UNITS'  
5 ADMINISTRATION OF THE SCHOOL BASED MEDICAID FEE-FOR-  
6 SERVICE PROGRAM.

7 Be it resolved by the House of Representatives:

8       Whereas, the federal Individuals With Disabilities Education Act (IDEA)  
9 provides that nothing in IDEA prohibits or restricts payment for medical assistance  
10 because such services are included in an individualized education plan or family service  
11 plan; and

12       Whereas, the match requirement of nonfederal dollars is met through the  
13 State Exceptional Children's funds; and

14       Whereas, there is no State or local cost when local school administrative units  
15 bill Medicaid for services provided to exceptional children; and

16       Whereas, North Carolina limits local school administrative units to the  
17 smallest number of billable services as compared to other states; Now, therefore,

18 Be it resolved by the House of Representatives:

19       **SECTION 1.** The North Carolina House of Representatives believes that  
20 schools should be eligible providers for Medicaid services such as mental health,  
21 personal care, and other rehabilitation and medical services. The House urges the  
22 Division of Medical Assistance of the North Carolina Department of Health and Human  
23 Services to move expeditiously to allow nursing services, case management, evaluation  
24 assessment services, and transportation services to be billed for Medicaid  
25 reimbursement and to consider adopting Random Moment Time Study for Medicaid  
26 Administrative Claiming.

1                   **SECTION 2.** The Principal Clerk shall transmit certified copies of this  
2 resolution to the Secretary of the North Carolina Department of Health and Human  
3 Services.

4                   **SECTION 3.** This resolution is effective upon adoption.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**H**

**D**

**BILL DRAFT 2007-RQz-4 [v.6] (11/19)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/22/2006 12:24:49 PM**

Short Title: Study Serv. for Std. w/Disabilt. in High Sch. (Public)

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Sponsors: Representatives Glazier, Bell, E. Warren, Wiley (Primary Sponsors); and Parmon.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO REQUIRE THE DEPARTMENT OF PUBLIC INSTRUCTION TO STUDY THE DELIVERY OF EDUCATIONAL AND OTHER SERVICES TO STUDENTS WITH DISABILITIES AT THE HIGH SCHOOL LEVEL AND REPORT TO THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

**SECTION 1.** The Department of Public Instruction shall identify the various models being utilized to deliver educational and other services at the high school level to children with disabilities in North Carolina. As a part of its study, the Department shall consider the efficacy of the models currently being used in the State and review the research for best practice models that are being implemented in other states. The Department shall report its findings and any recommended legislation or policy changes by December 1, 2007 to the Joint Legislative Education Oversight Committee.

**SECTION 2.** This act is effective when it becomes law.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**H**

**D**

**BILL DRAFT 2007-RQz-2 [v.6] (11/16)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/22/2006 12:25:17 PM**

Short Title: Teacher Training on Dual Discipline System. (Public)

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Sponsors: Representatives Bell, Glazier, Farmer-Butterfield, Johnson (Primary Sponsors); and Parmon.

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Referred to:

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A BILL TO BE ENTITLED

1 AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT  
2 COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO  
3 REQUIRE THE STATE BOARD OF EDUCATION TO DEVELOP A TRAINING  
4 PROGRAM FOR TEACHERS AND SCHOOL PERSONNEL ON THE DUAL  
5 SYSTEM OF DISCIPLINE AND TO REQUIRE LOCAL BOARDS OF  
6 EDUCATION TO IMPLEMENT THE TRAINING PROGRAM ON THE DUAL  
7 SYSTEM OF DISCIPLINE.  
8

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 115C-12 is amended by adding a new subdivision to read:

11 "(35) Duty to Develop a Training Program on the Dual System of Discipline. – The  
12 State Board shall develop a training program for teachers and school personnel that  
13 explains the dual system of discipline for nondisabled children and children with  
14 disabilities as defined in Article 9 of this Chapter. The State Board shall adopt a policy  
15 that requires all local boards of education to offer the training program to teachers and  
16 school personnel at the beginning of each school year as necessary. The training  
17 program on the dual system of discipline may be offered through distance learning."

18 **SECTION 2.** G.S. 115C-47 is amended by adding a new subdivision to read:

19 "(51) To Implement a Training Program on the Dual System of Discipline.– Local  
20 boards of education shall adopt a policy on the implementation of the training program  
21 developed by the State Board of Education on the dual system of discipline for  
22 nondisabled children and children with disabilities as defined in Article 9 of this  
23 Chapter. The policy shall require all teachers and school personnel to participate in the  
24 training program at the beginning of each school year as necessary."

1           **SECTION 3.** There is appropriated from the General Fund to the State  
2 Board of Education the sum of thirty thousand dollars (\$30,000) to develop the training  
3 program on the dual system of discipline for teachers and school personnel.

4           **SECTION 4.** Section 3 of this act becomes effective July 1, 2007. The  
5 remainder of this act is effective when it becomes law.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**H**

**D**

**BILL DRAFT 2007-RQz-3 [v.6] (11/16)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/22/2006 12:25:39 PM**

Short Title: Txtbks & Assignmts on Short Term Suspension. (Public)

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Sponsors: Representatives Glazier, E. Warren, Parmon, and Johnson (Primary Sponsors).

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO ALLOW STUDENTS PLACED ON SHORT TERM SUSPENSIONS TO TAKE THEIR TEXTBOOKS HOME FOR THE DURATION OF THE SHORT TERM SUSPENSION AND TO HAVE ACCESS TO HOMEWORK ASSIGNMENTS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 115C-391(b) reads as rewritten:

"(b) The principal of a school, or his delegate, shall have authority to suspend for a period of 10 days or less any student who willfully violates policies of conduct established by the local board of education. A student suspended under this subsection shall be provided all of the following:

- (1) The opportunity to take textbooks home for the duration of the suspension.
- (2) The right to inquire about homework assignments for the duration of the suspension.
- (3) The opportunity to take any quarterly, semester or grading period examinations missed during the suspension period."

**SECTION 2.** This act is effective when it becomes law.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**H**

**D**

**BILL DRAFT 2007-RQz-10 [v.6] (12/12)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/22/2006 12:26:06 PM**

Short Title: Add Professional Development Days to Sch Cal. (Public)

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Sponsors: Representatives Bell, Glazier, E. Warren, Farmer-Butterfield (Primary Sponsors); and Parmon.

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Referred to:

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A BILL TO BE ENTITLED  
AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT  
COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO  
ADD FIVE PROFESSIONAL DEVELOPMENT DAYS FOR TEACHERS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 115C-84.2 reads as rewritten:

**"§ 115C-84.2. School calendar.**

(a) School Calendar. – Each local board of education shall adopt a school calendar consisting of 220 days all of which shall fall within the fiscal year. A school calendar shall include the following:

(1) A minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the 180 instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.

(1a) Repealed by Session Laws 2004-180, s. 1, effective August 9, 2004.

(2) A minimum of 10 annual vacation leave days.

(3) The same or an equivalent number of legal holidays occurring within the school calendar as those designated by the State Personnel Commission for State employees.

1 (5) The remaining days scheduled by the local board in consultation with each  
2 school's principal for use as teacher workdays, additional instructional days, or other  
3 lawful purposes. Before consulting with the local board, each principal shall work with  
4 the school improvement team to determine the days to be scheduled and the purposes  
5 for which they should be scheduled. Days may be scheduled and planned for different  
6 purposes for different personnel and there is no requirement to schedule the same dates  
7 for all personnel. In order to make up days for school closing because of inclement  
8 weather, the local board may designate any of the days in this subdivision as additional  
9 make-up days to be scheduled after the last day of student attendance.

10 Local boards and individual schools are encouraged to use the calendar flexibility in  
11 order to meet the annual performance standards set by the State Board. Local boards of  
12 education shall consult with parents and the employed public school personnel in the  
13 development of the school calendar.

14 Local boards shall designate at least seven days scheduled under subdivisions (4)  
15 and (5) of this subsection as days on which teachers may take accumulated vacation  
16 leave. Local boards may designate the remaining days scheduled in subdivisions (4) and  
17 (5) of this subsection as days on which teachers may take accumulated vacation leave,  
18 but local boards shall give teachers at least 14 calendar days' notice before requiring a  
19 teacher to work instead of taking vacation leave on any of these days. A teacher may  
20 elect to waive this notice requirement for one or more of these days.

21 (b) Limitations. – The following limitations apply when developing the school  
22 calendar:

23 (1) The total number of teacher workdays for teachers employed for a 10 month  
24 term shall not exceed 200 days.

25 (2) The calendar shall include at least 42 consecutive days when teacher  
26 attendance is not required unless: (i) the school is a year-round school; or (ii) the teacher  
27 is employed for a term in excess of 10 months. At the request of the local board of  
28 education or of the principal of a school, a teacher may elect to work on one of the 42  
29 days when teacher attendance is not required in lieu of another scheduled workday.

30 (3) School shall not be held on Sundays.

31 (4) Veterans Day shall be a holiday for all public school personnel and for all  
32 students enrolled in the public schools.

33 (c) Emergency Conditions. – During any period of emergency in any section of  
34 the State where emergency conditions make it necessary, the State Board of Education  
35 may order general, and if necessary, extended recesses or adjournment of the public  
36 schools.

37 (d) Opening and Closing Dates. – Local boards of education shall determine the  
38 dates of opening and closing the public schools under subdivision (a)(1) of this section.  
39 Except for year-round schools, the opening date for students shall not be before August  
40 25, and the closing date for students shall not be after June 10. On a showing of good  
41 cause, the State Board of Education may waive this requirement to the extent that  
42 school calendars are able to provide sufficient days to accommodate anticipated makeup  
43 days due to school closings. A local board may revise the scheduled closing date if  
44 necessary in order to comply with the minimum requirements for instructional days or

1 instructional time. For purposes of this subsection, the term "good cause" means that  
2 schools in any local school administrative unit in a county have been closed eight days  
3 per year during any four of the last 10 years because of severe weather conditions,  
4 energy shortages, power failures, or other emergency situations.

5 The State Board also may waive this requirement for an educational purpose. The  
6 term "educational purpose" means a local school administrative unit establishes a need  
7 to adopt a different calendar for (i) a specific school to accommodate a special program  
8 offered generally to the student body of that school, (ii) a school that primarily serves a  
9 special population of students, or (iii) a defined program within a school. The State  
10 Board may grant the waiver for an educational purpose for that specific school or  
11 defined program to the extent that the State Board finds that the educational purpose is  
12 reasonable, the accommodation is necessary to accomplish the educational purpose, and  
13 the request is not an attempt to circumvent the opening and closing dates set forth in this  
14 subsection. The waiver requests for educational purposes shall not be used to  
15 accommodate system-wide class scheduling preferences.

16 The required opening and closing dates under this subsection shall not apply to any  
17 school that a local board designated as having a modified calendar for the 2003-2004  
18 school year or to any school that was part of a planned program in the 2003-2004 school  
19 year for a system of modified calendar schools, so long as the school operates under a  
20 modified calendar.

21 (e) Nothing in this section prohibits a local board of education from offering  
22 supplemental or additional educational programs or activities outside the calendar  
23 adopted under this section."

24 **SECTION 2.** G.S. 115C-302.1(b) reads as rewritten:

25 "(b) Salary Payments. – State-allotted teachers shall be paid for a term of 10  
26 months. State-allotted months of employment for vocational education to local boards  
27 shall be used for the employment of teachers of vocational and technical education for a  
28 term of employment to be determined by the local boards of education. However, local  
29 boards shall not reduce the term of employment for any vocational agriculture teacher  
30 personnel position that was 12 calendar months for the 1982-83 school year for any  
31 school year thereafter. In addition, local boards shall not reduce the term of employment  
32 for any vocational agriculture teacher personnel position that was 12 calendar months  
33 for the 2003-2004 school year for any school year thereafter.

34 Each local board of education shall establish a set date on which monthly salary  
35 payments to State-allotted teachers shall be made. This set pay date may differ from the  
36 end of the month of service. The daily rate of pay for teachers shall equal one  
37 twenty-second of the monthly rate of pay. Except for teachers employed in a year-round  
38 school or paid in accordance with a year-round calendar, or both, the initial pay date for  
39 teachers shall be no later than August 31 and shall include a full monthly payment.  
40 Subsequent pay dates shall be spaced no more than one month apart and shall include a  
41 full monthly payment.

42 Teachers may be prepaid on the monthly pay date for days not yet worked. A teacher  
43 who fails to attend scheduled workdays or who has not worked the number of days for  
44 which the teacher has been paid and who resigns, is dismissed, or whose contract is not

1 renewed shall repay to the local board any salary payments received for days not yet  
2 worked. A teacher who has been prepaid and continues to be employed by a local board  
3 but fails to attend scheduled workdays may be subject to dismissal under G.S. 115C-325  
4 or other appropriate discipline.

5 Any individual teacher who is not employed in a year-round school may be paid in  
6 12 monthly installments if the teacher so requests on or before the first day of the school  
7 year. The request shall be filed in the local school administrative unit which employs  
8 the teacher. The payment of the annual salary in 12 installments instead of 10 shall not  
9 increase or decrease the teacher's annual salary nor in any other way alter the contract  
10 made between the teacher and the local school administrative unit. Teachers employed  
11 for a period of less than 10 months shall not receive their salaries in 12 installments.

12 "

13 **SECTION 3.** Nothing in this act shall require the General Assembly to  
14 appropriate funds to implement it or require a local school administrative unit to spend  
15 additional funds to implement it.

16 **SECTION 4.** This act is effective when it becomes law and applies to school  
17 years beginning with the 2007-2008 school year. This act shall apply in all 100 counties  
18 and in all local school administrative units.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**H**

**D**

**BILL DRAFT 2007-RQz-9 [v.7] (12/12)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/22/2006 12:26:39 PM**

Short Title: Define Residence for Student w/Special Needs. (Public)

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Sponsors: Representatives Glazier, E. Warren, Johnson, Wiley (Primary Sponsors);  
and Parmon.

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Referred to:

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A BILL TO BE ENTITLED  
AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT  
COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO  
CLARIFY THE DEFINITION OF RESIDENCE FOR THE DELIVERY OF  
SPECIAL EDUCATION SERVICES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 115C-106.3 is amended by adding the following new  
subdivision to read:

"(18a) 'Residence' or 'reside' means the local educational agency in which  
the child with disabilities lives and is qualified for admission under G.S. 115C-366  
except for the age requirements of that section. This definition shall not apply to  
children with disabilities who were enrolled in a particular local education agency on  
the last day of school for the 2006-2007 school year for as long as they live within and  
are continuously enrolled in that local educational agency."

**SECTION 2.** This act is effective when it becomes law.





**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**H**

**D**

**BILL DRAFT 2007-RQz-1 [v.14] (11/17)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/22/2006 12:27:55 PM**

Short Title: Homebound Instruction Standards. (Public)

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Sponsors: Representatives Glazier, Bell, E. Warren, Johnson (Primary Sponsors);  
and Parmon.

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Referred to:

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A BILL TO BE ENTITLED  
AN ACT TO IMPLEMENT A RECOMMENDATION OF THE HOUSE SELECT  
COMMITTEE ON THE EDUCATION OF STUDENTS WITH DISABILITIES TO  
ESTABLISH STANDARDS FOR HOMEBOUND INSTRUCTION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 115C-106.3 is amended by adding the following new subdivisions to read:

"(3a) 'Educational services' means all of the following:

- a. The necessary instructional hours per week in the form and format as determined by the child's IEP team and consistent with federal and state law in order to provide the child with a free appropriate public education and a sound basic education. The instruction shall be delivered from a teacher certified to teach children with disabilities or a teacher who is certified in the subject of instruction to the extent allowed by IDEA and the federal No Child Left Behind Act;
- b. Related services included in the child's IEP.
- c. Behavior intervention services designed to address the behavior violation that caused the disciplinary change of placement in order to prevent a reoccurrence.

(5a) 'Homebound instruction' means educational services provided to a student outside the school setting."

**SECTION 2.** This act is effective when it becomes law.

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# Appendix

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## Appendix A

April 1, 2006 Child Count by Disability Category & Ethnicity							
Category-Ethnicity	Native-American	Asian	African-American	Hispanic	Multi-Cultural	White	Grand Totals
Autism	29	119	1,963	220	207	4,210	6,748
Behavioral-Emotional Disabilities	80	17	5,011	155	280	3,907	9,450
Deaf-Blind	1		6	2	1	21	31
Developmentally Delayed	175	160	5,692	1,307	509	6,733	14,576
Educable Mental Disabilities	693	119	12,826	950	284	6,778	21,650
Hearing Impaired	27	55	636	246	52	1,218	2,234
Multi-Handicapped	25	30	604	116	39	1,100	1,914
Orthopedically Impaired	12	22	271	66	23	746	1,140
Other Health Impaired	309	107	8,043	622	784	16,985	26,850
Severe-Profound Mental Disabilities	8	11	313	51	8	390	781
Specific Learning Disabilities	1,014	553	20,466	5,269	1,350	36,748	65,400
Speech-Language Impaired	1,097	506	10,383	2,320	1,247	26,369	41,922
Trainable Mental Disabilities	73	48	1,418	214	51	1,409	3,213
Traumatic Brain Injured	5	5	190	27	20	270	517
Visually Impaired	2	11	219	47	11	434	724
<b>Grand Totals</b>	<b>3,550</b>	<b>1,763</b>	<b>68,041</b>	<b>11,612</b>	<b>4,866</b>	<b>107,318</b>	<b>197,150</b>

# Appendix B

**MEMORANDUM OF UNDERSTANDING**  
by and between the  
**NORTH CAROLINA STATE BOARD OF EDUCATION,**  
through the **DEPARTMENT OF PUBLIC INSTRUCTION,**  
**EXCEPTIONAL CHILDREN DIVISION**  
and the  
**NORTH CAROLINA OFFICE OF ADMINISTRATIVE HEARINGS**

**1. Purpose**

State and federal special education laws create certain due process rights for parents, which permit them to challenge a school system's decision relating to the identification, evaluation, educational placement, provision of a free appropriate public education, or a manifestation determination regarding disciplinary issues, including requesting an administrative hearing. With the exception of consent for the initial provision of special education, local education agencies, charter schools, and state operated programs are permitted to request an administrative hearing on these issues if they are unable to obtain parental consent to carry out proposed actions. The local education agency or state operated program may also request an expedited hearing if it believes that maintaining the student's current placement is substantially likely to result in injury to the student or others.

The North Carolina General Assembly assigned responsibility for conducting special education due process hearings to the Office of Administrative Hearings (OAH) by amending Article IX § 115C-109.6 of the North Carolina General Statutes (GS). The Department of Public Instruction (DPI) and the OAH agree that OAH shall conduct all "Special Education" due process hearings for DPI arising under 20 USC § 1415 and 34 CFR § 300.511 and § 300.532, and to implement the terms outlined in this agreement.

In accordance with GS 115C-109.6(j) this Memorandum of Understanding (Memorandum) is entered into by the State Board of Education (Board), through the Department of Public Instruction, Exceptional Children Division (DPI) and the Office of Administrative Hearings (OAH). As required by the above referenced statutes, this Memorandum of Understanding shall establish procedures and timelines that are efficient and meet the criteria of the federal Individuals with Disabilities Education Improvement Act (IDEA) so that impartial hearings regarding school systems and parents of, and children with disabilities are expeditiously handled. In particular, this Memorandum addresses (1) the reasons, number of days, and means for providing notice to parties; (2) when a petition is initiated for the purpose of determining when a decision is reached, and specifically, when appropriate mediation is begun before and after a petition is filed and when no mediation is filed; (3) whether mediated conferences subject to Chapter 150B are appropriate, and if so, when they should occur and how they will affect the timelines; (4) the number of extensions to be allowed and the basis on which an extension may be granted, and; (5) the standard of review for cases going to review officers.

## 2. Responsibilities

A. The State Board of Education through the Department of Public Instruction and the Exceptional Children Division is the designated State Education Agency (SEA) and must ensure that the State establishes, maintains, and implements procedural safeguards that meet the requirements of IDEA and its implementing regulations. The DPI's responsibilities as the State agency responsible for ensuring that the requirements of the IDEA are met and a due process hearing system is available to parents and local education agencies are set forth in 20 USC § 1415(f)(1)(A) and 34 CFR § 300.511(b) in the federal regulations. In accordance with State and federal requirements, impartial due process hearings held pursuant to IDEA must be conducted by a hearing officer (Administrative Law Judge in OAH) who is not an employee of the SEA or the local educational agency (LEA) that is involved in the education or care of the exceptional child. The Exceptional Children Division's Dispute Resolution Consultant assigned to Due Process Hearings is designated by the State Board to receive copies of petitions, appeals, motions, and notices and communicate with the OAH on issues related to due process hearings.

B. The Office of Administrative Hearings is an independent quasi-judicial agency that was established to provide a source of independent Administrative Law Judges (ALJ) to preside in administrative law contested cases. It was created to ensure that the functions of rulemaking, investigation, advocacy and adjudication are not combined in the administrative process.

In accordance with GS 7A-750. Creation; status; purpose:

"There is created an Office of Administrative Hearings. The Office of Administrative Hearings is an independent, quasi-judicial agency under Article III, Sec. 11 of the Constitution and, in accordance with Article IV, Sec. 3 of the Constitution, has such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which it is created. The Office of Administrative Hearings is established to ensure that administrative decisions are made in a fair and impartial manner to protect the due process rights of citizens who challenge administrative action and to provide a source of independent administrative law judges to conduct administrative hearings in contested cases in accordance with Chapter 150B of the GS and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process."

Among other powers of administrative law judges prescribed by statute, rule and regulation, the administrative law judge shall regulate the course of the hearing, including discovery, hear and rule on motions, issue orders regarding prehearing matters, and make preliminary, interlocutory, or other orders as deemed appropriate. Pursuant to 26 NCAC 03 .0101 and to the extent that it does not conflict with IDEA, the regulations, North Carolina law (not in conflict with IDEA or its regulations) and the North Carolina Procedures Governing Programs and Services for Children with Disabilities (Procedures), "The Rules of Civil Procedure as contained in GS 1A-1, the General Rules of Practice for the Superior and District Courts as authorized by GS 7A-34 and found in the Rules Volume of the GS shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute

or rule of the Office of Administrative Hearings or item in this Memorandum provides otherwise.”

C. This Memorandum is not intended to diminish or abrogate the duties, responsibilities or powers vested in and to any of the parties to this agreement and as such nothing in this writing shall be construed to do so. Further, nothing in this Memorandum shall be construed to have the effect of restricting or limiting the rights and procedures available under the State or Federal Constitutions or any other Federal or State laws that yield protection of the rights of children with disabilities.

### **3. Service Standards**

#### **A. Department of Public Instruction – Exceptional Children Division**

(1) Reference Materials. DPI will provide the ALJs identified for special education due process hearings with copies of: (1) the Individuals with Disabilities Education Improvement Act (IDEA) Amendments of 2004 and all regulations related to the IDEA, including any new, amended, or repealed statutes or regulations; (2) Article 9 of the GS Chapter 115C; (3) North Carolina Procedures; (4) Copies of Exceptional Children Policy Letters related to IDEA; and (5) Questions and Answers Related to Policy Issues about Students with Disabilities. DPI shall pay for a yearly subscription to the Individuals with Disabilities Education Law Reporter (IDELR/EHLR) for the OAH.

(2) Training. DPI will provide and pay tuition and costs for IDEA training to the special education ALJs designated by the Chief Administrative Law Judge. Payment of training costs must be approved by the Exceptional Children Division Director and by the Superintendent of DPI. Training topics may include: State and federal special education laws and regulations; administrative interpretations; relevant case law; special education issues; specific disabilities; evaluation and assessment procedures; development of individual educational programs; techniques for conducting effective and impartial hearings; and drafting clear and substantiated orders and decisions. DPI will review with the Chief ALJ, on a yearly basis, the ongoing special education training needs of ALJs. ALJs hearing special education cases will be required to participate annually in IDEA training updates and are strongly encouraged to participate in training developed and provided by the State Board of Education under GS 115C-107.2(h). OAH may identify a maximum of three ALJs for consideration to attend national trainings on legal issues regarding the education of students with disabilities for ALJs and Hearing Officers as determined by DPI and the OAH.

(3) Support Services. DPI shall pay court reporter invoices including but not limited to one original transcript for the hearing officer, one copy of the transcript for the parent, court reporters' billable hours for hearings, appearance fees, and travel fees. DPI shall pay for interpreter services when needed. DPI will not pay for copies of transcripts for the LEA, for cancellation fees, or for expedited transcripts. The party responsible for the late cancellation shall be responsible for the court reporter costs related to that late cancellation.

B. Office of Administrative Hearings

(1) Selection of Administrative Law Judges. The OAH, acting through the Chief ALJ or designee, will assign ALJs to preside over hearings required by IDEA and State law. The OAH will provide to DPI a list of those ALJs in its employ who are qualified to conduct special education hearings with verification from the OAH that any ALJ assigned to conduct such hearing is qualified as referenced below. The OAH will not appoint temporary ALJs, as otherwise authorized by North Carolina General Statute 7A-757, to conduct special education hearings. The list provided to the DPI shall contain at least three ALJs at all times. The OAH will provide the DPI with a 60-day notice if a current special education ALJ will no longer be available to conduct special education hearings.

(2) Qualifications. The ALJ who conducts a hearing under GS 115C-109.6 shall not be a person who has a personal or professional interest that conflicts with the judge's objectivity in the hearing. No ALJ employed by or contracted by the OAH will be appointed as a special education ALJ unless the ALJ meets the qualifications under IDEA 2004. To conduct such special education hearings, independent administrative law judges (ALJ) must:

- (a) Possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;
- (b) Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice;
- (c) Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice;
- (d) Not be an employee of the SEA or the LEA that is involved in the education or care of the child; and
- (e) not be a person having a personal or professional interest that conflict with the person's objectivity in the hearing. A hearing officer is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(3) Hearing Tasks. The OAH agrees to conduct due process hearings for special education disputes between parents of students with disabilities and local education agencies, charter schools, and state operated programs in accordance with federal and state laws and regulations, including the Individuals with Disabilities Education Improvement Act, as amended in 2004; 34 CFR §§ 300 and 301; Article 9 of Chapter 115C of the North Carolina General Statutes; the Procedures; and controlling case law. The OAH shall provide the necessary clerical support, hearing space, equipment, material, and other related services necessary or incidental to the performance of the impartial due process hearing, including but not limited to assigning the presiding ALJs, responding to motions regarding the sufficiency of petitions, conducting the impartial due process hearing, reporting the due process final decision, arranging for court reporters and transcript services, securing interpreters when necessary, and providing the

Exceptional Children Division's Dispute Resolution Consultant assigned to Due Process Hearings with a copy of the pleadings, agreements, motions, orders and decision as filed with the OAH Chief Hearing's Clerk. The Office of Administrative Hearings shall also serve a copy of all orders and decisions issued by the presiding ALJ with the parties or the attorneys representing the parties in the impartial due process hearing.

(4) Delegation of Authority. the ALJ shall have the authority to:

- a. determine the timeliness and adequacy of the hearing request;
- b. determine the sufficiency of the petition, and any other filings, based upon 34 CFR §§ 300.508 and 300.507(a);
- c. determine the prevailing party;
- d. request an independent educational evaluation, at public expense, as part of a due process hearing;
- e. bar any party, who fails to disclose to all other parties at least five business days prior to a hearing, all evaluations and recommendations based on the evaluations completed by that date, from introducing the evaluations or recommendations at the hearing without the consent of the other party;
- f. grant permission for a petition to be amended at any time not later than 5 days before the hearing begins and consistent with 34 CFR § 300.508(d)(3);
- g. grant extensions for cause at the request of either party as long as the extension does not result in the denial of the child's access to a free appropriate public education;
- h. issue an independent final administrative decision that is binding on the parties on behalf of the State education agency on all hearings conducted under IDEA 2004; and
- i. the powers granted in GS 150B-33, excepting subsections (a), (b)(6) and (b)(12).

The OAH agrees that the ALJs will not utilize the following practices in special education due process hearings:

- (a) permit parties to raise issues at the hearing that were not raised in the due process petition (or amended petition), unless the other party agrees otherwise;
- (b) stay the contested case action except for the purpose of granting an extension at the request of the parties;
- (c) impose monetary sanctions; and
- (d) award attorneys fees.

#### **4. Notice, Petitions, Mediation, Resolution Periods and Extensions**

##### **A. Prehearing Procedures**

DPI and OAH will develop internal operating procedures for the timely dissemination of Notices and documents to and from the parties and the exchange of documents and records between the OAH and DPI. The OAH and DPI will collaborate to develop forms and Notices that are specific to special education due process hearings and contain language that is easily understood by parents.

##### **B. Filing of Petitions**

(1) A parent or a public agency may file a due process complaint on any of the matters described in 34 CFR §300.503(a)(1) and (2) relating to the identification, evaluation or educational placement of a child with a disability, the provision of a free appropriate public education (FAPE) to the child, or manifestation determination consistent with the procedures in 34 CFR §§ 300.507, 300.508, and 300.510.

(2) The party requesting a due process hearing must submit a petition or a request for a hearing (which must remain confidential) to the OAH within one year of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process petition, except if the parent was prevented from filing a due process petition due to the exceptions stated in 34 CFR § 300.511(f), including prevention as a result of specific misrepresentations by the LEA that it had resolved the problem forming the basis of the complaint; or the LEA's withholding of information from the parent that was required by the IDEA to be provided.

(3) The petition must include--

- (a) The name of the child;
- (b) The address of the residence of the child;
- (c) The name of the school the child is attending;
- (d) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
- (e) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- (f) A proposed resolution of the problem to the extent known and available to the party at the time.

(4) A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process petition that meets the requirements of paragraph (3) of this section. The due process petition must be deemed sufficient unless the party receiving the due process petition notifies the hearing officer and the other party in writing,

within 15 days of receipt of the due process complaint, that the receiving party believes the due process petition does not meet the requirements in paragraph (3) of this section.

(5) The petition must be submitted to not only the OAH but also the local Superintendent, when a parent files a petition. A copy of any petition or request for a hearing, regardless of the party filing, must be sent to the Consultant for Due Process at the DPI Exceptional Children Division. Within no more than two business days of receipt of the petition, the OAH will fax or deliver a copy of the petition to the EC Division. Within two business days, the EC Division will fax or deliver a copy of the petition to the EC Program Director in the LEA, charter school, or the state operated program. Within one day of receipt of the petition from the petitioner, the LEA must fax a date-stamped copy of the petition to the OAH and to the EC Division. The hearing timelines begin on the date the party receives the petition from the petitioner.

(6) Within five business days of receipt of a copy of the LEA's date-stamped petition or request for a hearing, the OAH will appoint an ALJ and send a Notice of Contested Case and Assignment to the petitioner and to the school superintendent or individual designated by the LEA to receive such notices, with copies to the EC Division. The OAH will assign a hearing date for all special education cases within applicable statutory and regulatory timelines. If practicable, the notice will set the hearing for approximately 45 days from the date of receipt of the petition from the petitioner with discovery set to end five business days prior to the hearing. The EC Division will send forms and documents explaining the resolution sessions, mediation, and timelines to the EC Program Director and to the party filing the petition.

(7) If the party receiving the due process complaint notifies the ALJ and the other party in writing within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the statutory requirements for a request for a hearing, the ALJ must make a determination on the face of the request/petition of whether it meets the requirements of paragraph (3) of this section. Within five days of receipt of notification, the ALJ must immediately notify the parties in writing whether it meets the requirements of paragraph (3) of this section and (i) determine that the petition is sufficient, (ii) determine that the petition is not sufficient and dismiss the action with prejudice, or (iii) determine that the petition is not sufficient but permit amendment consistent with 34 CFR § 508 (d) (3).

(8) A party may amend its due process petition only if:

(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or

(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

C. Resolution Period

(1) The parties shall be provided with 30 days from the receipt of the petition to resolve the issues in the petition prior to the initiation of an impartial due process hearing, as

specified in 34 CFR § 300.510. Within 2 business days after the conclusion of a resolution session or mediation or after the conclusion of the 30 day resolution period if resolution is continuing, the LEA will notify the OAH and DPI of the status of any resolution session, mediation, or settlement process. If resolution has been waived or the party refused to participate in a resolution session or mediation, the LEA must notify the OAH and DPI within two business days. The DPI will notify the OAH of the status of resolution, mediation and/or settlement no later than two business days from receiving notice of the status from the LEA. If the parties wish to continue any mediation at the end of the 30-day resolution period, the parties must agree in writing and file a motion for an extension of the timelines with the OAH and send a copy to DPI.

(2) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

(3) The OAH will make adjustments to the 30-day resolution period according to 34 CFR 300.510(c).

#### C. Mediation

DPI provides mediation services for IDEA disputes as specified in 34 CFR § 300.506. Mediation shall be voluntary on the part of the parties and shall not be used to deny or delay a parent's rights to a hearing or to toll the time periods for a due process hearing. DPI shall ensure that mediation is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. DPI shall maintain a list of individuals who are qualified mediators. DPI shall bear the cost of the mediation process. If mediation is occurring after the filing of a contested case hearing, the DPI shall forward a copy of all documents regarding the designation of a mediator and the time limitation for completion of the mediation to the OAH within 2 business days after forwarding any document to the parties. Mediated Settlement Conferences as provided in North Carolina General Statute 150B-23.1 shall not apply to IDEA impartial due process hearings.

#### E. Prehearing Conference

After the filing of the petition, the ALJ appointed to conduct the impartial due process hearing will hold a pre-hearing conference with the parties (in person or by conference call) to identify issues; establish with specificity the date(s) and expected length of hearing; determine a schedule for the exchange of documents and witness list; determine whether the hearing will be closed or open to the public; review with the parties their rights and the procedures for the hearing; review the status of discovery; and exclude inadmissible evidence. The ALJ will issue a brief summary of pre-hearing conference decisions.

#### F. Extensions

Subject to and as may be limited by the authority granted by Federal law and regulations, the ALJ may grant specific extensions of time beyond the 45-day timeline at the request of either party. Extensions shall be granted for good cause shown and not for purposes

of delaying or denying the rights of either party. If such an extension is granted, the ALJ shall provide written notice to the parties and DPI and include the party or parties requesting the extension; the reason for granting the extension; the length of the extension; and the date by which the written decision will be reached and mailed to the parties.

## **5. Hearings**

A. The hearing shall be scheduled as set forth in the notice of hearing unless an extension has been granted per 34 CFR § 300.515(c). The hearing shall be conducted at a time and in a location that is reasonably convenient to the parents and child involved and in the county where the child attends school or is entitled to enroll under GS 115C-366, unless the parties mutually agree to a different venue, or other extenuating circumstances prevent a hearing at the desired location. The hearing shall be closed to the public unless the parent requests in writing that the hearing be open to the public. The hearing shall not be open to television cameras or radio broadcasts. If a motion is presented to permit recordings for broadcast on television or radio, the ALJ will not rule on that motion without giving DPI and the parties (Petitioner(s) and LEA) 48 hours to respond to the motion, which shall be grounds for a two-day extension. The hearing shall be scheduled so that a final decision can be entered and mailed to the parties not later than 45 days after the timeline began, unless an extension(s) is granted.

B. Unless an extension has been granted, the 45-day timeline for the due process hearing starts the day after one of the following events:

- (a) Both parties agree in writing to waive the resolution meeting;
- (b) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
- (c) After the parent or public agency withdraws from the mediation process when both parties agreed in writing to continue the mediation at the end of the 30-day resolution period.

C. The OAH will follow the timelines and regulations set forth in 34 CFR § 300.532 for conducting an expedited due process hearing.

## **6. Decisions.**

A. Following the hearing, the administrative law judge shall issue a written decision regarding the issues that were the subject matter of the hearing. The determination of whether a child received a free appropriate public education (FAPE) shall be based on substantive grounds. An ALJ may find that a child did not receive a FAPE based upon procedural violations if such violations impeded the child's right to FAPE; significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE; or if the procedural inadequacies caused a deprivation of an educational benefit.

B. The ALJ's decision shall contain findings of fact and conclusions of law, based upon the IDEA law and regulations, the Procedures, Article 9 of the GS Chapter 115C, and applicable case law. The ALJ's decision shall contain a statement informing the parties of the process for submitting an appeal, including the 30-day statute of limitations and the procedure for enforcement of the ALJ's decision, as set forth in the Procedures and in accordance with Federal law and regulations, and State law.

C. The Office of Administrative Hearings shall simultaneously send a copy of the decision by certified mail to the parties and the attorneys of record and send an electronic copy and a signed copy to the Exceptional Children Division's Dispute Resolution Consultant assigned to Due Process Hearings. The decision of the administrative law judge becomes final and is not subject to further review unless appealed to DPI under GS 115C-109.9.

## **7. Record of the Hearing.**

A. After rendering a final decision and issuing a final order, the ALJ shall deliver a complete and organized record of the hearing to the OAH Chief Hearings Clerk. OAH shall prepare a copy of record of the hearing, including all exhibits, orders, any motions and other pleadings filed in the proceeding, an original written verbatim record of the hearing, and the final decision of the administrative law judge. The OAH shall transfer the record of the hearing or a copy of the record to the Exceptional Children Division within 30 days of filing their decision, except for cases in which an appeal of the decision is filed.

B. The DPI shall respond to and process requests made under the public records law to inspect or copy records of hearings including requests made while the records are in the custody of the ALJ. If the OAH receives a public records request while a record is in the custody of an ALJ or the OAH, this request will be forwarded to the DPI. The requested record will not be released by the ALJ. The DPI will redact the decision for identifying information before releasing to the public and before publishing on its website. The agency shall distribute a redacted copy of all decisions to the State Advisory Council and publish a redacted copy of all decisions on the Exceptional Children website.

C. The Office of Administrative Hearings shall simultaneously serve a copy of all orders and decisions under this Part with the parties or the attorneys representing the parties and with the person designated by the State Board under GS 115C-107.2(b)(9).

## **8. Appeals and Standard of Review for Cases to Review Officers.**

A. North Carolina uses a two-tier system for the hearing of Special Education cases. In accordance with 20 U.S.C. § 1415(g) if the hearing is conducted at the first tier, "any party aggrieved by the findings and decision rendered in the hearing may appeal such findings and decision to the State educational agency." Under North Carolina's Education of Children

with Disabilities laws (GS 115C-106.1 *et seq.*) and particularly GS 115C-109.9, any party aggrieved by the findings and decision of the ALJ in a contested case hearing “may appeal the findings and decision within 30 days after receipt of notice of the decision” by filing a written notice of appeal with the person designated by the State Board under GS 115C-107.2(b)(9) to receive notices. The notice shall include the name, telephone number, and address of the appellant; and the decision being appealed. The State Board, through the Exceptional Children Division, shall appoint a Review Officer who shall conduct an impartial review of the findings and decision appealed.

B. DPI will send an electronic copy of the appeal to the Clerk at OAH within one business day of receipt. The clerk will provide DPI with a certified copy of the records within five business days of the notification that an appeal has been filed. The DPI will transfer a certified copy of the records to the Review Officer within one business day of receipt of the record and will maintain the record at the close of the appeal.

C. The individual conducting the review must examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; and make an independent decision upon completion of the review of the whole record and upon considering additional evidence and oral or written arguments, if applicable.

D. The decision of the review officer is limited to whether the evidence presented at the OAH hearing supports the findings of fact and conclusions of law and whether the conclusions of law are supported by and consistent with 20 USC § 1415, 34 CFR §§ 300 and 301; GS 115C; the Procedures; and case law. The review officer must also consider any further evidence presented to him or her in the review process.

E. The DPI will transfer a certified copy of the records of the administrative proceedings to any State court of competent jurisdiction or in a district court of the United States, at the request of either party, when the Review Officer’s decision is appealed.

## **9. Disputes.**

In the event that a dispute over this Agreement arises after the Memorandum has been signed, both parties agree to use their best efforts and good faith to negotiate and resolve disputes. Any disagreements shall not affect or diminish the procedural safeguards available to parents of children with disabilities under IDEA and state law.

Should a dispute arise under this Agreement, which the OAH and DPI cannot ultimately resolve, it shall be determined in the following manner: OAH and the Exceptional Children Division shall each appoint one member to a Dispute Board, and an agreed upon third party. The Dispute Board shall review the facts and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

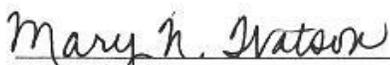
- a. applicable federal statutes and regulations;
- b. state statutes, Procedures, and rules;
- c. statement of work; and
- d. any other provisions of the agreement, including materials incorporated by reference.

#### **10. Meetings between DPI and OAH.**

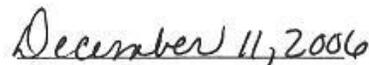
At least two representatives from the Exceptional Children Division and the OAH will meet bimonthly, or more frequently as necessary, to review training needs, issues raised in petitions, interpretation of IDEA through OSEP and DPI Policy Letters, and other relevant topics as necessary.

IN WITNESS WHEREOF, the parties state and affirm that they are duly authorized to bind the respected entities designated below as of the day and year indicated. This agreement shall be effective November 27, 2006.

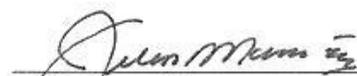
**STATE BOARD OF EDUCATION OF THE STATE OF NORTH CAROLINA  
FOR the DEPARTMENT OF PUBLIC INSTRUCTION:**



Mary N. Watson  
Director, Exceptional Children Division  
Department of Public Instruction  
6356 Mail Service Center  
Raleigh, NC 27699-6356  
Phone: 919-807-3969  
Fax: 919-807-3243

  
Date

**NORTH CAROLINA OFFICE OF ADMINISTRATIVE HEARINGS  
FOR the OFFICE OF ADMINISTRATIVE HEARINGS**



Julian Mann, III  
Chief Administrative Law Judge  
Director, Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
Phone: 919-733-2691  
Fax: 919-733-3478

  
Date

# Appendix C

## House Select Committee On Education of Students with Disabilities



***INTERIM REPORT TO THE  
HOUSE OF REPRESENTATIVES  
OF THE  
2006 REGULAR SESSION  
OF THE  
2005 GENERAL ASSEMBLY  
OF NORTH CAROLINA***

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# TABLE OF CONTENTS

LETTER OF TRANSMITTAL.....	i
COMMITTEE MEMBERSHIP .....	ii
PREFACE.....	iii
COMMITTEE PROCEEDINGS.....	1
AUTHORIZING LETTER.....	6
LEGISLATIVE PROPOSAL I – A BILL TO BE ENTITLED AN ACT TO REWRITE THE LAWS GOVERNING THE EDUCATION OF CHILDREN WITH SPECIAL NEEDS AND TO MAKE AN APPROPRIATION.....	8
LEGISLATIVE PROPOSAL II – A BILL TO BE ENTITLED AN ACT TO APPROPRIATE FUNDS FOR CHILDREN WITH DISABILITIES .....	36
LEGISLATIVE PROPOSAL III – A HOUSE RESOLUTION URGING THE UNITED STATES DEPARTMENT OF EDUCATION TO RESPOND QUICKLY BUT THOUGHTFULLY ON THE FINAL REGULATIONS FOR STUDENTS WITH DISABILITIES, ALLOW SUFFICIENT TIME FOR STATES TO IMPLEMENT THE FINAL REGULATIONS, AND AFFORD AS MUCH FLEXIBILITY AS POSSIBLE TO THE STATES DURING THE INTERIM PERIOD .....	37

STATE OF NORTH CAROLINA

HOUSE SELECT COMMITTEE ON EDUCATION OF STUDENTS  
WITH DISABILITIES



May 3, 2006

TO THE MEMBERS OF THE HOUSE OF REPRESENTATIVES OF THE 2006 REGULAR  
SESSION OF THE 2005 GENERAL ASSEMBLY:

Attached for your consideration is an interim report to the House of Representatives of the 2005 General Assembly. This report was prepared by the House Select Committee on Education of Students with Disabilities pursuant to G.S. 120-19.6(a) and Rule 26(a) of the Rules of the House of Representatives of the 2005 General Assembly.

Respectfully submitted,

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Representative Rick Glazier  
Chair

---

Representative Jean Farmer-Butterfield  
Vice-Chair

---

Representative Jean R. Preston  
Vice-Chair

HOUSE SELECT COMMITTEE ON EDUCATION OF STUDENTS WITH  
DISABILITIES

2005-2006 MEMBERSHIP

Representative Rick Glazier, Chair  
Representative Jean Farmer-Butterfield, Vice-Chair  
Representative Jean R. Preston, Vice-Chair  
Representative Bernard Allen  
Representative Larry M. Bell  
Representative Becky Carney  
Representative Arlie F. Culp  
Representative Maggie Jeffus  
Representative Linda P. Johnson  
Representative Earline W. Parmon  
Representative Edith D. Warren  
Representative Laura I. Wiley

COMMITTEE STAFF

Robin Johnson  
Shirley Iorio  
Adam Levinson  
Carin Savel, Committee Assistant

## PREFACE

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In 2005, the House Select Committee on Education of Students with Disabilities was established to study and recommend revisions to the General Statutes governing the education of students with disabilities for the following purposes:

- (1) To update definitions and requirements to ensure that the public schools and education programs for students with disabilities are meeting these students' special needs.
- (2) To provide a consistent statutory maximum age for students with disabilities entitled to a free appropriate public education.
- (3) To reflect higher education expectations for children with disabilities and the requirements of the State's school accountability program.
- (4) To ensure that schools and school systems are held accountable for the educational progress of students with disabilities.
- (5) To determine whether the Department of Public Instruction has adopted guidelines that have had an unfunded fiscal impact on local school systems, and if so, how to address this in the future.
- (6) To ensure that the General Statutes are consistent with federal law governing the education of all children, including exceptional children.

The Committee began its study with a presentation on the Individuals with Disabilities Education Improvement Act (IDEA) of 2004, the federal law governing the education of students with disabilities. Following that presentation, the Director for Exceptional Children at the Department of Public Instruction explained to the Committee the need for rewriting the State statute, citing specific areas that the Committee must address because noncompliance with federal law may result in the United States Department of Education identifying the State as a "high risk" grantee and consequently subject to losing significant federal funds.

After having been presented this background information, the Committee heard from people in the field who must implement both the federal and State law, and therefore heard from special education teachers, school administrators, directors of exceptional children, school boards and school board attorneys. They also heard from parents of students with disabilities and from advocacy groups such as the Special Needs Federation.

The most critical issue in need of changing is the State's due process procedures for dealing with disputes between parents and local educational agencies. Other topics of discussion included special education funding, including funding for textbooks, testing issues, whether or not to continue to include pregnant students as a disability, and whether or not to raise the 12.5% funding cap.

The Committee worked closely with the Director for Exceptional Children and her staff at the Department of Public Instruction to make the necessary revisions to the General Statutes to ensure that they are consistent with federal law.

At its meeting on May 3, 2006, the Committee reviewed proposed legislation and adopted this interim report.

## COMMITTEE PROCEEDINGS

The House Select Committee on Education of Students with Disabilities met six times. The Committee Assistant maintains a notebook containing committee minutes and all information presented to the committee.

**January 19, 2006**

### **Welcome/Introductions**

Representative Glazier

### **Review of Charge to Committee**

Shirley Iorio, Committee Legislative Analyst

### **History and Detailed Overview of Federal Law/Regulations**

Leigh M. Manasevit, Attorney, Brustein & Manasevit, Washington, D.C.

### **Need for Rewrite of State Statute**

Mary Watson, Director, Exceptional Children's Division, DPI

### **History of State Law and Potential Issues to Address**

Robin Johnson, Committee Counsel

### **Committee Discussion—Agenda, Issues, Schedule, Presenters**

**February 2, 2006**

### **Who Are These Students? How are They Identified? What Changes Have Occurred in 20 Years?**

Mary Watson, Director, Exceptional Children Division, DPI

### **Concerns from Special Educators and Others**

Debbie Metcalf, National Board Certified Exceptional Children's Teacher, Sam D. Bundy Elementary School, Pitt County Schools, and "Teacher-in-Residence," Department of Curriculum and Instruction, ECU School of Education

Phyllis Luck, EMD/TMD Self-Contained Teacher, Terry Sanford High School, Cumberland County Schools

Michael Brantley, BED Self-Contained Teacher, Terry Sanford High School, Cumberland County Schools

Daphne Byrd, National Board Certified Teacher, K-2 Autistic students, Pilot Elementary School, Guilford County Schools

Norma McLamb, Pre-K Autistic separate, Lindley Elementary School, Guilford County Schools

Ratna Sarin, National Board Certified Teacher, LD/EMD/OHI - Resource, Jefferson Elementary School, Guilford County Schools

Andrea Smith, BED students, James B. Dudley High School, Guilford County Schools

Donna Wright, All Disabilities – Resource, Morehead Elementary School, Guilford County Schools

Nancy R. Routh, Ed. D., Guilford County Board of Education, At-Large, Retired Educator: Greensboro Public Schools - Teacher, Exceptional Children, 1967-75; Curriculum Coordinator; Elementary Principal, 1975-1993.

### **NCAE Survey of Special Educators**

Julie Dwyer, NCAE Education Specialist

### **Committee Discussion**

**March 6, 2006**

#### **Concerns from School Administrators**

Larry Price, Superintendent, Wilson County Schools

Jeanette Davis, Executive Director, Exceptional Children, Wilson County Schools

Pollye Pruitt, Director, Exceptional Children's Program, Carteret County Schools

Faye Riner, Executive Director, Exceptional Children, Cumberland County Schools

Cleon Felton, Principal, Cornerstone Academy, Edgecombe County Schools

Laurie Sypole, Principal, Level Cross Elementary, Randolph County Schools

Melissa Dunlap, Principal, Ashley Park Elementary, Charlotte-Mecklenburg Schools

Diane Antolak, Principal, Reid Ross Classical, Cumberland County Schools

David Ansbacher, Principal, E. Millbrook Middle School, Wake County Schools

#### **Concerns from Parents and Advocates**

Polly Laubinger, Attorney, Governor's Advocacy Council for Persons with Disabilities

Iris Green, Attorney, Governor's Advocacy Council for Persons with Disabilities

Connie Hawkins, Director, Exceptional Children's Assistance Center

Ellen Russell, Special Needs Federation

Sheila Knapp, Parent, Member of Council for Educational Services for Exceptional Children, and Vice-President of Wake County Special Education PTA

Wendy Boyd, Special Education Alliance

Al Wheatley, Parent, Cumberland County Schools

Sherie Presnell, Parent, McDowell County Schools

### **Special Education Funding/Resources**

Adam Levinson, Committee Fiscal Analyst

### **First Issue Discussion: Eligibility**

Robin Johnson, Committee Counsel

Mary Watson, Director, Exceptional Children's Division, DPI

### **Committee Discussion**

**March 30, 2006**

### **Concerns from School Boards and School Board Attorneys**

Leanne Winner, NC School Boards Association and NC Council of School Attorneys

### **State Plan and State Rules – Procedures**

*State Performance Plan: (1) August 9, 2005, Memo from US Department of Education, (2) October 24, 2005, Weekly Message to Superintendents*

*State Eligibility: December 9, 2005, Memo from US Department of Education*

Mary Watson, Director, Exceptional Children's Division, DPI

### **Issues Discussion**

### **Should State law use the same "words" as IDEA where there is no disagreement?**

Robin Johnson, Committee Counsel

### **State Discretion**

Robin Johnson, Committee Counsel

**Categories of Disability**

Robin Johnson, Committee Counsel

Mary Watson, Director, Exceptional Children’s Division, DPI

**Should “Pregnant” Be Included as a Disability? Should Pregnant Students Be Addressed in State Law?**

Shirley Iorio, Committee Analyst

Mary Watson, Director, Exceptional Children’s Division, DPI

Janine Murphy, Attorney, Principals’ Executive Program

**Eligibility: Maximum Age**

Robin Johnson, Committee Counsel

Mary Watson, Director, Exceptional Children’s Division, DPI

**Purpose Clause – G.S. 115C-106: Should this remain as currently written?**

Shirley Iorio, Committee Analyst

Mary Watson, Director, Exceptional Children’s Division, DPI

Janine Murphy, Attorney, Principals Executive Program

**Funds for Textbooks and Teacher Manuals for Teachers of Exceptional Children**

Adam Levinson, Fiscal Analyst

**Committee Discussion**

**April 18, 2006**

**DUE PROCESS AND OTHER PROCEDURAL ISSUES**

Mary Watson, Director, Exceptional Children’s Division, DPI

Ann Majestic, School Attorney

**Are changes needed for the mediation process?**

**Are changes needed to address issues with due process hearings?**

**Are changes needed for the evaluation and reevaluation procedures?**

**Are other changes needed?**

**QUESTIONS FOR COMMITTEE DISCUSSION**

By Issue: Current State and Federal Law and Policy

Robin Johnson, Committee Counsel

By Issue: DPI Recommendation

Mary Watson, Director, Exceptional Children’s Division, DPI

**Is additional enforcement or monitoring authority needed?**

**Should the State Board of Education be required to report to the General Assembly? If so, what should be reported and when?**

**Should membership on the Council for Exceptional Children be amended?**

**OTHER COMMITTEE DISCUSSION**

**May 3, 2006**

**TESTING ISSUES**

Lou Fabrizio, Director, Accountability Services, Department of Public Instruction

**SHOULD FUNDING BE INCREASED? SHOULD THE 12.5% CAP BE RAISED?**

Adam Levinson, Fiscal Analyst

**REVIEW DRAFT LEGISLATION FOR TEXTBOOK FUNDS**

Adam Levinson, Fiscal Analyst

**REVIEW DRAFT LEGISLATION FOR PREGNANT STUDENTS**

Dr. Shirley Iorio, Committee Analyst

**REVIEW DRAFT LEGISLATION FOR REWRITE OF ARTICLE 9**

Robin Johnson, Committee Counsel

**OTHER COMMITTEE DISCUSSION**



Office of the Speaker  
North Carolina House of Representatives  
Raleigh, North Carolina 27601-1096

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## **HOUSE SELECT COMMITTEE ON EDUCATION OF STUDENTS WITH DISABILITIES**

### **TO THE HONORABLE MEMBERS OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES**

**Section 1.** The **House Select Committee on Education of Students With Disabilities** is established by the Speaker, effective December 1, 2005, as a select committee of the House pursuant to G.S. 120-19.6(a) and Rule 26(a) of the Rules of the House of Representatives of the 2005 General Assembly.

**Section 2.** The Select Committee consists of twelve members. The individuals listed below are appointed as members of the Select Committee. Members serve at the pleasure of the Speaker of the House of Representatives.

Representative Rick Glazier, Chair

Representative Bernard Allen	Representative Linda P. Johnson
Representative Larry M. Bell	Representative Earline W. Parmon
Representative Becky Carney	Representative Jean R. Preston
Representative Arlie F. Culp	Representative Edith D. Warren
Representative Jean Farmer-Butterfield	Representative Laura I. Wiley
Representative Maggie Jeffus	

**Section 3.** The Select Committee may meet during the interim period between regular sessions upon the call of its chair.

**Section 4.** The Select Committee shall study and recommend revisions to the General Statutes governing the education of students with disabilities for the following purposes:

- (1) To update definitions and requirements to ensure that the public schools and education programs for students with disabilities are meeting these students' special needs.
- (2) To provide a consistent statutory maximum age for students with disabilities entitled to a free appropriate public education.

- (3) To reflect higher education expectations for children with disabilities and the requirements of the State's school accountability program.
- (4) To ensure that schools and school systems are held accountable for the educational progress of students with disabilities.
- (5) To determine whether the Department of Public Instruction has adopted guidelines that have had an unfunded fiscal impact on local school systems, and if so, how to address this in the future.
- (6) To ensure that the General Statutes are consistent with federal law governing the education of all children, including exceptional children.

**Section 5.** The Select Committee shall report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before December 31, 2006, by filing a report with the Speaker's offices, the House Principal Clerk, and the Legislative Library. The Select Committee terminates on December 31, 2006, or upon the filing of its final report, whichever occurs first.

**Section 6.** The Select Committee is vested with the authority contained in Article 5A of Chapter 120 of the General Statutes.

**Section 7.** Members of the Select Committee shall receive per diem, subsistence, and travel allowance at the rate established in G.S. 120-3.l.

**Section 8.** The expenses of the Select Committee are considered expenses incurred for the operation of the House of Representatives and shall be paid pursuant to G.S. 120-35 from funds available to the House for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of a co-chair of the Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.



---

James B. Black  
Speaker



1    **"§ 115C-106.3. Definitions.**

2    The following definitions apply in this Article:

- 3           (1) "Child with a disability" means a child with at least one disability who  
4           because of that disability requires special education and related  
5           services.
- 6           (2) "Disability" includes mental retardation; hearing impairment,  
7           including deafness; speech or language impairment; visual  
8           impairment, including blindness; serious emotional disturbance;  
9           orthopedic impairment; autism; traumatic brain injury; other health  
10          impairments, specific learning disability, or other disability as may be  
11          required to be included under IDEA. For a child ages three through  
12          seven, this term also includes developmental delay.
- 13          (3) "Dispute" means a disagreement between the parties.
- 14          (4) "Free appropriate public education" means special education and  
15          related services that:
- 16               a. Are provided at public expense, under public supervision and  
17               direction, and without charge;
- 18               b. Meet the standards of the State Board;
- 19               c. Include an appropriate preschool, elementary school, or  
20               secondary school education in the State; and
- 21               d. Are provided in conformity with an individualized education  
22               program.
- 23          (5) "Hearing officers" include administrative law judges as defined in  
24          G.S. 150B-2(1) and hearing review officers.
- 25          (6) "IDEA" means The Individuals with Disabilities Education  
26          Improvement Act, 20 U.S.C. § 1400, et seq. (2004), as amended, and  
27          federal regulations adopted under this act.
- 28          (7) "IEP Team" is as defined in IDEA.
- 29          (8) "Individualized education program" or "IEP" means a written  
30          statement for each child with a disability that is developed, reviewed,  
31          and revised consistent with IDEA.
- 32          (9) "Infant or toddler with a disability" is as defined in IDEA.
- 33          (10) "Least restrictive environment" means to the maximum extent  
34          appropriate, children with disabilities are educated with children who  
35          are not disabled, and special classes, separate schooling, or other  
36          removal of children with disabilities from the regular educational  
37          environment occurs only when the nature of the disability is such that  
38          education in regular classes with the use of supplementary aids and  
39          services cannot be achieved satisfactorily.
- 40          (11) "Local educational agency" includes any of the following that provides  
41          special education and related services to children with disabilities:
- 42               a. A local school administrative unit.
- 43               b. A charter school.
- 44               c. The Department of Health and Human Services.

- 1 d. The Department of Correction.
- 2 e. The Department of Juvenile Justice and Delinquency
- 3 Prevention.
- 4 f. Any other State agency or unit of local government.
- 5 (12) "Mediation" means an informal process conducted by a mediator with
- 6 the objective of helping parties voluntarily settle their dispute.
- 7 (13) "Mediator" means a neutral person who acts to encourage and
- 8 facilitate a resolution of a dispute.
- 9 (14) "Parent" means:
- 10 a. A natural, adoptive, or foster parent;
- 11 b. A guardian, but not the State if the child is a ward of the State;
- 12 c. An individual acting in the place of a natural or adoptive parent,
- 13 including a grandparent, stepparent, or other relative, and with
- 14 whom the child lives;
- 15 d. An individual who is legally responsible for the child's welfare;
- 16 or
- 17 e. A surrogate if one is appointed under G.S. 115C-109.2.
- 18 (15) "Parties" means the local educational agency and the parents.
- 19 (16) "Petition" means a request for a due process hearing as provided for
- 20 under IDEA.
- 21 (17) "Preschool child with a disability" means a child with one or more
- 22 disabilities who meets all of the following criteria:
- 23 a. Has reached the child's third birthday and whose parents have
- 24 requested services from the public schools.
- 25 b. Is not eligible to enroll in public kindergarten.
- 26 c. Because of the disability, needs special education and related
- 27 services in order to prepare the child to benefit from the educational
- 28 programs provided by the public schools, beginning with kindergarten.
- 29 (18) "Related services" is as defined in IDEA.
- 30 (19) "Rules" include rules, policies, and procedures.
- 31 (20) "Special education" means specially designed instruction, at no cost to parents, to
- 32 meet the unique needs of a child with a disability. The term includes instruction in
- 33 physical education and instruction conducted in a classroom, the home, a hospital or
- 34 institution, and other settings."Part 1B. Provision of Free Appropriate Public Education.
- 35 **§ 115C-107.1. Free appropriate public education; ages.**
- 36 (a) A free appropriate public education shall be made available to the following:
- 37 (1) All children with disabilities who reside in the State, who are the ages
- 38 of three through 21, and who require special education and related
- 39 services.
- 40 (2) Any child with a disability who is receiving special education and
- 41 related services until the end of the school year in which that child
- 42 reaches the age of 22.
- 43 (3) Children with disabilities who require special education and related
- 44 services and who are suspended or expelled from school.

1 (b) A free appropriate public education is not required to be provided to infants  
2 and toddlers with disabilities. However, early intervention services shall be made  
3 available to these children under G.S. 143B-139.61.(c) If funds are made available, the  
4 State Board and the Secretary of Health and Human Services may adopt an agreement  
5 to allow the continuation of early intervention services for children with a disability  
6 who are at least three years old but before they enter kindergarten or are eligible to enter  
7 kindergarten. If an agreement is adopted under this subsection, then a free appropriate  
8 public education is not required to be provided to any child with a disability who  
9 continues to receive early intervention services in accordance with that agreement.

10 (d) Nothing in this Article requires a free appropriate public education to be  
11 made available to any individual aged 18 through 21 who, in the educational placement  
12 immediately before that individual's incarceration in an adult correctional facility, was  
13 not actually identified as being a child with a disability and did not have an IEP.

14 "§ 115C-107.2. Duties of State Board of Education.(a) The State Board of  
15 Education shall adopt rules to ensure that:

- 16 (1) The requirements of this Article and IDEA are met.
- 17 (2) All educational programs under the supervision of any local  
18 educational agency for children with disabilities meet all of the  
19 following requirements:
  - 20 a. The programs are under the general supervision of individuals  
21 in the State who are responsible for educational programs for  
22 children with disabilities.
  - 23 b. The programs meet the State Board's educational standards.
  - 24 c. With respect to homeless children, the programs meet the  
25 requirements of 20 U.S.C. § 1431, McKinney-Vento Homeless  
26 Assistance Act.

- 27 (b) The rules adopted under subsection (a) of this section shall include rules that:
  - 28 (1) Establish standards for the programs of special education to be  
29 administered by local educational agencies and by the State Board.
  - 30 (2) Ensure that children with disabilities are educated in the least  
31 restrictive environment.
  - 32 (3) Ensure that local school administrative units make available special  
33 education and related services to all preschool children with  
34 disabilities whose parents request these services.
  - 35 (4) Provide for public hearings, adequate notice of these hearings, and an  
36 opportunity for comment from the general public before the adoption  
37 of the rules required by this Article.
  - 38 (5) Are required in order to receive federal funding under IDEA.
  - 39 (6) Provide that, where a local educational agency finds that appropriate  
40 services are available from other public agencies or private  
41 organizations, the local educational agency may contract for those  
42 services rather than provide them directly.
  - 43 (7) Enable local educational agencies to identify, evaluate, place, and  
44 make other educational decisions for children with disabilities.

1 (8) Provide procedural safeguards for children with disabilities and their  
2 parents.

3 (9) Designate a person in the Department of Public Instruction who is  
4 charged with receiving and responding to notices or other legal  
5 documents under Part 1D of this Article.

6 (10) Support and facilitate local educational agency and school-level system  
7 improvement designed to enable children with disabilities to meet the challenging State  
8 student academic achievement standards.(c) Rules adopted under this section shall  
9 be consistent with IDEA and shall comply with G.S. 115C-12(19). Local educational  
10 agencies, parents, and other individuals concerned with the education of children with  
11 disabilities shall be consulted in the development of rules adopted under this Article.

12 (d) The State Board shall develop forms for local educational agencies to use in  
13 order to comply with this Article. The forms must comply with G.S. 115C-12(19) and  
14 may be in an electronic format.

15 (e) The State Board shall provide technical assistance to local educational  
16 agencies at their request.

17 (f) The State Board shall develop any plans that meet the criteria of IDEA and  
18 are required to be submitted to the United States Department of Education.

19 (g) The State Board shall make available to hearing officers training related to  
20 IDEA and its legal interpretations in order to facilitate hearings and reviews under  
21 G.S. 115C-109.6.

22 **"§ 115C-107.3. Child find.**

23 (a) The Board shall require an annual census of children with disabilities,  
24 subdivided for "identified" and "suspected" children with disabilities, to be taken in  
25 each school year. Suspected children are those in the formal process of being evaluated  
26 or identified as children with disabilities. The census shall be conducted annually and  
27 shall be completed by October 15, submitted to the Governor and General Assembly  
28 and made available to the public by January 15 annually.

29 (b) In taking the census, the Board requires the cooperation, participation, and  
30 assistance of all local educational agencies. Therefore, each local educational agency  
31 shall cooperate and participate with and assist the Board in conducting the census.

32 (c) The census shall include the number of children identified and suspected with  
33 disabilities, their age, the nature of their disability, their county or city of residence,  
34 their local school administrative unit residence, whether they are being provided special  
35 educational or related services and if so by what local educational agency, the identity  
36 of each local educational agency having children with disabilities in its care, custody,  
37 management, jurisdiction, control, or programs, the number of children with disabilities  
38 being served by each local educational agency, and any other information or data that  
39 the Board requires. The census shall be of children with disabilities between the ages  
40 three through 21.

41 **"§ 115C-107.4. Monitoring and enforcement.**

42 (a) The State Board shall monitor all local educational agencies to determine  
43 compliance with this Article and IDEA. The State Board also shall monitor the  
44 effectiveness of IEPs in meeting the educational needs of children with disabilities.

1 (b) The State Board shall implement an effective and efficient system of  
2 incentives and sanctions for local educational agencies in order to improve results for  
3 children with disabilities and meet the requirements of this Article and IDEA. The  
4 system, which must be based on a continuum of recognition and sanctions, shall:

5 (1) Identify and recognize local educational agencies that achieve or  
6 exceed targets and indicators as determined by the State Board,  
7 demonstrate significant improvement over time, and show growth on  
8 targets and indicators as determined by each local educational agency.

9 (2) Provide consequences for local educational agencies that are  
10 substantially noncompliant with statutory and regulatory requirements  
11 under this Article and IDEA.

12 (c) The system of incentives developed under subsection (b) of this section may  
13 include commendations, public recognition, allocation of grant funds if available, and  
14 any other incentives as considered appropriate by the State Board.

15 (d) The system of sanctions developed under subsection (b) of this section shall  
16 include the following:

17 (1) Level One – Needs Assistance: When the State Board determines (i) a  
18 local school educational agency has been in noncompliance for two  
19 years and (ii) that agency needs assistance in implementing the  
20 requirements of this Article and IDEA, the State Board shall take one  
21 or more of the following actions:

22 a. The Board may direct the local educational agency to allocate  
23 additional time and resources for technical assistance and  
24 guidance related to areas of noncompliance.

25 b. The Board may impose special conditions on that agency's  
26 application for IDEA funds.

27 c. The Board may direct how that local educational agency utilizes  
28 IDEA funds to address the remaining findings of  
29 noncompliance. The local educational agency must track the  
30 use of these funds to show how the funds are targeted to address  
31 areas of noncompliance.

32 (2) Level Two – Needs Intervention: If the State Board determines (i) that  
33 the local educational agency has been in noncompliance for three years  
34 and (ii) that agency needs assistance in implementing this Article and  
35 IDEA, the following apply:

36 a. The Board may take any of the actions described in subdivision  
37 (1) of this subsection.

38 b. The Board shall withhold, in whole or in part, any further  
39 payments of IDEA funds to the agency.

40 c. The Board shall require the agency to enter into a compliance  
41 agreement.

42 (3) Level Three – Needs Substantial Intervention: In addition to the  
43 sanctions described in subdivisions (1) and (2) of this subsection, if at  
44 any time the State Board determines a local educational agency (i)

1 needs substantial intervention in implementing the requirements of this  
2 Article and IDEA, or (ii) has established a substantial failure to  
3 comply with this Article and IDEA, the Board shall take one or more  
4 of the following actions:

- 5 a. The Board shall direct the agency to implement a compliance  
6 agreement, billed to that agency.
- 7 b. The Board shall recover IDEA funds.
- 8 c. The Board shall refer the agency for appropriate enforcement  
9 under State or federal law.

10 (e) In addition to the consequences required under subsections (b) and (d) of this  
11 section, the State Board shall develop sanctions for local educational agencies that fail  
12 to implement a corrective action or hearing decision.

13 **"§ 115C-107.5. Annual reports.**

14 The State Board shall report annually to the Joint Legislative Education Oversight  
15 Committee on the implementation of this Article and the educational performance of  
16 children with disabilities. Each annual report shall include a copy of the following  
17 documents that were submitted, received, or made public during the year: (i) the most  
18 recent State performance plan and any amendments to that plan submitted to the  
19 Secretary of Education, (ii) compliance and monitoring reports submitted to the  
20 Secretary of Education, (iii) the annual report submitted to the Secretary of Education  
21 on the performance of the State under its performance plan, and (iv) any other  
22 information required under IDEA to be made available to the public. In addition, the  
23 annual report shall include an analysis of the educational performance of children with  
24 disabilities in the State and a summary of disputes under Part 1D of this Chapter. The  
25 report shall be filed no later than October 15 each year and may be filed electronically.

26 **"§ 115C-107.6. Duties of local educational agencies.**

27 (a) Each local educational agency, in providing for the education of children with  
28 disabilities within its jurisdiction, must comply with IDEA and the rules adopted by the  
29 State Board under this Article. In addition, each local educational agency shall have in  
30 effect policies, procedures, and programs that are consistent with this Article, IDEA,  
31 and rules adopted by the State Board.

32 (b) No local educational agency shall prohibit a child with a disability from  
33 enrolling in a public school or public program of special education or related services to  
34 which that child would otherwise be eligible to attend based solely on the fact that the  
35 child has a disability. If it appears the child should receive a program of free appropriate  
36 public education in a program operated by or under the supervision of the Department  
37 of Health and Human Services or the Department of Juvenile Justice and Delinquency  
38 Prevention, the local school administrative unit shall confer with the appropriate  
39 Department of Health and Human Services or Department of Juvenile Justice and  
40 Delinquency Prevention staff for their participation and determination of the  
41 appropriateness of placement in that program and development of the child's  
42 individualized education program.

43 (c) No matriculation or tuition fees or other fees or charges shall be required or  
44 asked of children with disabilities or their parents except those fees or charges that are

1 required uniformly of all public school pupils. The provision of a free appropriate public  
2 education within the facilities of the Department of Health and Human Services and the  
3 Department of Juvenile Justice and Delinquency Prevention shall not prevent that  
4 Department from charging for other services or treatment.

5 (d) Each child with a disability shall be educated in accordance with that child's  
6 IEP and in the least restrictive environment for that child.

7 (e) Each local educational agency shall use the forms developed under  
8 G.S. 115C-107.2(d).

9 **"§ 115C-107.7. Discipline.**

10 The policies and procedures for the discipline of students with disabilities shall be  
11 consistent with federal laws and regulations.

12 "Part 1C. Interagency Coordination.

13 **"§ 115C-108.1. State Board lead agency.**

14 (a) The Board shall cause all local educational agencies to provide special  
15 education and related services to children with disabilities in their care, custody,  
16 management, jurisdiction, control, or programs. In this regard, all local school  
17 administrative units and all other local educational agencies providing special education  
18 and related services shall explore available local resources and determine whether the  
19 services are currently being offered by an existing public or private agency.

20 (b) The jurisdiction of the Board with respect to the design and content of special  
21 education programs or related services for children with disabilities extends to and over  
22 the Department of Health and Human Services, the Department of Juvenile Justice and  
23 Delinquency Prevention, and the Department of Correction.

24 (c) All provisions of this Article that are specifically applicable to local school  
25 administrative units also are applicable to the Department of Health and Human  
26 Services, the Department of Juvenile Justice and Delinquency Prevention, and the  
27 Department of Correction and their divisions and agencies; all duties, responsibilities,  
28 rights, and privileges specifically imposed on or granted to local school administrative  
29 units by this Article also are imposed on or granted to the Department of Health and  
30 Human Services, the Department of Juvenile Justice and Delinquency Prevention, and  
31 the Department of Correction and their divisions and agencies. However, with respect to  
32 children with disabilities who are residents or patients of any State-operated or  
33 State-supported residential treatment facility, including a school for the deaf, school for  
34 the blind, mental hospital or center, mental retardation center, or in a facility operated  
35 by the Department of Juvenile Justice and Delinquency Prevention, the Department of  
36 Correction or any of their divisions and agencies, the Board may contract with the  
37 Department of Health and Human Services, the Department of Juvenile Justice and  
38 Delinquency Prevention, and the Department of Correction for the provision of special  
39 education and related services and the power to review, revise, and approve any plans  
40 for special education and related services to those residents.

41 (d) The Departments of Health and Human Services, Correction, and Juvenile  
42 Justice and Delinquency Prevention shall submit to the Board their plans for the  
43 education of children with disabilities in their care, custody, or control. The Board may  
44 grant specific exemptions for programs administered by the Department of Health and

1 Human Services, the Department of Juvenile Justice and Delinquency Prevention, or the  
2 Department of Correction when compliance by them with the Board's standards would,  
3 in the Board's judgment, impose undue hardship on that department and when other  
4 procedural due process requirements, substantially equivalent to those required under  
5 this Article and IDEA, are assured in programs of special education and related services  
6 furnished to children with disabilities served by that department. Further, the Board  
7 shall recognize that inpatient and residential special education programs within the  
8 Departments of Health and Human Services, Correction, and Juvenile Justice and  
9 Delinquency Prevention may require more program resources than those necessary for  
10 optimal operation of these programs in local school administrative units.

11 (e) When a specified special education or related service is being offered by a  
12 local public or private resource, a local educational agency shall negotiate for the  
13 purchase of that service or shall present full consideration of alternatives and its  
14 recommendations to the Board. In this regard, a new or additional program for special  
15 education or related services shall be developed with the approval of the Board only  
16 when that service is not being provided by existing public or private resources or the  
17 service cannot reasonably be purchased from existing providers. Further, the Board  
18 shall support and encourage joint and collaborative special education planning and  
19 programming at local levels to include local school administrative units and the  
20 programs and agencies of the Departments of Health and Human Services, Correction,  
21 and Juvenile Justice and Delinquency Prevention.

22 **"§ 115C-108.2. Interlocal cooperation.**

23 The Board, any two or more local educational agencies, and any other agency and  
24 any State department, agency, or division having responsibility for the education,  
25 treatment, or habilitation of children with disabilities may enter into interlocal  
26 cooperative undertakings under Part 1 of Article 20 of Chapter 160A of the General  
27 Statutes or into undertakings with a State agency such as the Departments of Public  
28 Instruction, Health and Human Services, Juvenile Justice and Delinquency Prevention,  
29 or Correction, or their divisions, agencies, or units, for the purpose of providing for the  
30 special education and related services, treatment, or habilitation of these children within  
31 the jurisdiction of the agency or unit, and shall do so when it is unable to provide the  
32 appropriate public special education or related services for these children. In entering  
33 into such undertakings, the local agency and State department, agency, or division shall  
34 also contract to provide the special education or related services that are educationally  
35 appropriate to the children with disabilities for whose benefit the undertaking is made,  
36 and provide these services by or in the local agency unit or State department, agency, or  
37 division located in the place most convenient to these children.

38 "Part 1D. Procedural Safeguards.

39 **"§ 115C-109.1. Handbook for parents.**

40 The State Board of Education shall make available to parents a handbook of  
41 procedural safeguards. This handbook for parents shall be made available at least once  
42 each school year, except that a copy also shall be given to the parent (i) upon the initial  
43 referral or parental request for an evaluation; (ii) upon the first occurrence of the filing  
44 of a petition under G.S. 115C-109.6 and IDEA; (iii) upon the parent's request; and (iv)

1 upon any revision to the content of the handbook. This handbook for parents shall  
2 include a full explanation of the procedural safeguards under this Article and IDEA, be  
3 written in the native language of the parent unless it clearly is not feasible to do so, be  
4 written in an easily understood manner, and include information required under IDEA  
5 to be included.

6 The State Board shall place a current copy of the handbook for parents on its  
7 Internet Web site.

8 **"§ 115C-109.2. Adult children with disabilities; surrogate parents.**

9 (a) When a child with a disability reaches the age of 18, all of the following  
10 apply:

- 11 (1) Notices required under this Article shall be provided to both the child  
12 and the child's parent.
- 13 (2) All other rights accorded to parents under this Article and IDEA  
14 transfer to the child.
- 15 (3) The local educational agency shall notify the child and the child's  
16 parent of these transfer rights.

17 (b) Notwithstanding subsection (a) of this subsection, the State Board shall  
18 establish procedures appointing a parent of a child with a disability to represent the  
19 educational interests of the child throughout the period of eligibility of the child when  
20 the child reaches the age of 18, has not been determined to be incompetent, but has been  
21 determined not to have the ability to provide informed consent with respect to the  
22 educational program of the child.

23 (c) A reasonable effort must be made to appoint a surrogate for a child with a  
24 disability within 30 days of a determination that one of the following conditions exists  
25 and that the child needs a surrogate:

- 26 (1) The parents of that child are not known;
- 27 (2) The parents, after reasonable efforts, cannot be located; or
- 28 (3) The child is a ward of the State.

29 (d) A person must be eligible under IDEA to be appointed as a child's surrogate.

30 **"§ 115C-109.3. Access to records; opportunity for parents to participate in  
31 meetings.**

32 (a) Each local educational agency shall provide an opportunity for the parents of  
33 a child with a disability to examine all records relating to that child and to participate in  
34 meetings with respect to the identification, evaluation, and educational placement of the  
35 child, and the provision of a free appropriate public education to that child.

36 (b) Local educational agencies may release the records of a child with a disability  
37 only as permitted under State or federal law. The parents of a child with a disability may  
38 have access to the child's records and may read, inspect, and copy all and any records,  
39 data, and information maintained by a local educational agency with respect to that  
40 child. Parents, upon their request, are entitled to have those records, data, and  
41 information fully explained, interpreted, and analyzed for them by the staff of the  
42 agency, unless specifically prohibited by court order. If a request is made under this  
43 subsection, the local educational agency shall honor the request within not more than 45

1 days after it is made or in time for the individual who made the request to prepare for a  
2 meeting under subsection (a) of this section, whichever is sooner.

3 (c) The student and the student's parents may add written explanations or  
4 clarifications to the records, data, and information and may request the expunction of  
5 incorrect, outdated, misleading, or irrelevant entries. If a local educational agency  
6 refuses to expunge incorrect, outdated, misleading, or irrelevant entries after having  
7 been asked to do so by the parent, the parent may appeal that decision under  
8 G.S. 115C-45(c)(2).

9 **"§ 115C-109.4. Mediation.**

10 (a) It is the policy of this State to encourage local educational agencies and  
11 parents to seek mediation involving any dispute under this Article, including matters  
12 arising before or after filing a petition under G.S. 115C-109.6.

13 (b) Mediation under this section must meet the following requirements:(1)

14 The mediation must be voluntary on the part of both parties.

15 (2) Mediation shall not be used to deny or delay a parent's right to an  
16 impartial hearing under G.S. 115C-109.6, or to deny any other rights  
17 afforded under this Article or IDEA.

18 (3) The mediation shall be conducted by a qualified and impartial  
19 mediator who is trained in effective mediation technique.

20 (c) The State Board may establish procedures to offer to parties that do not  
21 choose to use the mediation process an opportunity to meet with a disinterested party, as  
22 provided under IDEA, who can encourage the use and explain the benefits of the  
23 mediation process to the parties. This meeting must be at a time and location convenient  
24 to the parents.

25 (d) The State Board shall maintain a list of qualified mediators who are  
26 knowledgeable in laws and regulations relating to the provision of special education and  
27 related services. When mediation is requested, the Exceptional Children Division of the  
28 Department of Public Instruction shall assign a mediator from this list of mediators.

29 (e) The State shall bear the cost of the mediation process, including the costs of  
30 meetings described under subsection (b) of this section, unless the parties opt to select a  
31 mediator other than the mediator assigned under subsection (c) of this section or if the  
32 parties opt to use an alternative method of dispute resolution.

33 (f) Each session in the mediation process shall be scheduled in a timely manner  
34 and shall be held in a location that is convenient to the parties to the dispute.

35 (g) Evidence of statements made and conduct occurring in a mediation are  
36 confidential, are not subject to discovery, and are inadmissible in any proceeding in the  
37 action or other actions on the same claim. However, no evidence otherwise discoverable  
38 is inadmissible merely because it is presented or discussed in a mediation. Mediators  
39 shall not be compelled in any civil proceeding to testify or produce evidence concerning  
40 statements made and conduct occurring in a mediation.

41 (h) When resolution is reached to resolve the dispute through the mediation  
42 process, the parties shall execute a legally binding agreement that:

43 (1) Sets forth the agreement.

- 1 (2) States that all discussions that occurred during the mediation process  
2 are confidential and may not be used as evidence in any subsequent  
3 impartial hearing under G.S. 115C-109.6 or in any civil proceeding.  
4 (3) Is signed by both the parent and a representative of the local  
5 educational agency who has the authority to bind that agency.  
6 (4) Is enforceable in any State administrative forum, any State court of  
7 competent jurisdiction, or in a district court of the United States.

8 (i) In addition to mediation as provided by this section, the parties may  
9 participate in a mediated settlement conference as provided by G.S. 150B-23.1. In  
10 addition, the parties may agree to use other dispute resolution methods or to use  
11 mediation in other circumstances, including after a request for formal administrative  
12 review is filed, to the extent permitted under State and federal law.

13 **"§ 115C-109.5. Prior written notice.**

14 (a) The local educational agency shall provide prompt written notice to parents  
15 whenever that agency proposes to initiate or change, or refuses to initiate or change (i)  
16 the identification, evaluation, or educational placement of a child, or (ii) the provision of  
17 a free appropriate public education to a child with a disability. The local educational  
18 agency shall document that all required notices have been sent to and received by  
19 parents.

- 20 (b) This prior written notice shall be in the native language of the parents,  
21 unless it clearly is not feasible to translate it, and shall contain all of  
22 the following information:(1) A description of the action proposed or  
23 refused by the local educational agency.  
24 (2) An explanation of why the local educational agency proposes or  
25 refuses to take the action and a description of each evaluation  
26 procedure, assessment, record, or report that agency used as a basis for  
27 the proposed or refused action.  
28 (3) A statement that the parent of a child with a disability has protection  
29 under the procedural safeguards of this Article and IDEA and, if this  
30 notice is not the initial referral for evaluation, the means by which a  
31 copy of the procedural safeguards can be obtained.  
32 (4) Sources for parents to contact to obtain assistance in understanding  
33 this Article and IDEA.  
34 (5) A description of other options considered by the IEP Team and the  
35 reason why those options were rejected.  
36 (6) A description of the factors that are relevant to the local educational  
37 agency's proposal or refusal.  
38 (7) Any other information required to be included under IDEA.

39 **"§ 115C-109.6. Impartial due process hearings.**

40 (a) Any party may file with the Office of Administrative Hearings a petition to  
41 request an impartial hearing with respect to any matter relating to the identification,  
42 evaluation, or educational placement of a child, or the provision of a free appropriate  
43 public education of a child, or a manifestation determination. The party filing the

1 petition must notify the other party and the person designated under  
2 G.S. 115C-107.2(b)(9) by simultaneously serving them with a copy of the petition.

3 (b) Notwithstanding any other law, the party shall file a petition under subsection  
4 (a) of this section that includes the information required under IDEA and that sets forth  
5 an alleged violation that occurred not more than one year before the party knew or  
6 reasonably should have known about the alleged action that forms the basis of the  
7 petition. The issues for review under this section are limited to those set forth in  
8 subsection (a) of this section. The party requesting the hearing may not raise issues that  
9 were not raised in the petition unless the other party agrees otherwise.

10 (c) The one-year restriction in subsection (b) of this section shall not apply to a  
11 parent if the parent was prevented from requesting the hearing due to (i) specific  
12 misrepresentations by the local educational agency that it had resolved the problem  
13 forming the basis of the petition, or (ii) the local educational agency's withholding of  
14 information from the parent that was required under State or federal law to be provided  
15 to the parent.

16 (d) The hearing shall be conducted in the county where the child attends school  
17 or is entitled to enroll under G.S. 115C-366, unless the parties mutually agree to a  
18 different venue.

19 (e) The hearing shall be closed to the public unless the parent requests in writing  
20 that the hearing be open to the public.

21 (f) Subject to G.S. 115C-109.7, the decision of the administrative law judge  
22 shall be made on substantive grounds based on a determination of whether the child  
23 received a free appropriate public education. Following the hearing, the administrative  
24 law judge shall issue a written decision regarding the issues set forth in subsection (a) of  
25 this section. The decision shall contain findings of fact and conclusions of law.  
26 Notwithstanding Chapter 150B of the General Statutes, the decision of the  
27 administrative law judge becomes final and is not subject to further review unless  
28 appealed to the Review Officer under G.S. 115C-109.9.

29 (g) A copy of the administrative law judge's decision shall be served upon each  
30 party and a copy shall be furnished to the attorneys of record. The written notice shall  
31 contain a statement informing the parties of the availability of appeal and the 30-day  
32 limitation period for appeal as set forth in G.S. 115C-109.9.

33 (h) In addition to the petition, the parties shall simultaneously serve a copy of all  
34 pleadings, agreements, and motions under this Part with the person designated by the  
35 State Board under G.S. 115C-107.2(b)(9). The Office of Administrative Hearings shall  
36 simultaneously serve a copy of all orders and decisions under this Part with the person  
37 designated by the State Board under G.S. 115C-107.2(b)(9).

38 (i) Nothing in this section shall be construed to preclude a parent from filing a  
39 separate due process petition on an issue separate from a petition already filed.

40 (j) Notwithstanding Chapter 150B of the General Statutes, the State Board,  
41 through the Exceptional Children Division, and the State Office of Administrative  
42 Hearings shall develop and enter into a binding memorandum of understanding to  
43 ensure compliance with the statutory and regulatory procedures and timelines applicable  
44 under IDEA to due process hearings and to hearing officers' decisions, and to ensure the

1 parties' due process rights to a fair and impartial hearing. This memorandum of  
2 understanding shall be amended if subsequent changes to IDEA are made. The  
3 procedures and timelines shall be made part of the Board's procedural safeguards that  
4 are made available to parents and the public under G.S. 115C-109.1 and 115C-109.5.

5 **"§ 115C-109.7. Resolution session.**

6 (a) Within 15 days of receiving notice of the parent's petition filed under  
7 G.S. 115C-109.6 and before the opportunity for an impartial hearing, the local  
8 educational agency shall convene a meeting with the parent and the relevant members  
9 of the IEP Team who have specific knowledge of the facts identified in the petition.  
10 This meeting shall include a representative of the agency who has decision-making  
11 authority on behalf of that agency and may not include an attorney of the local  
12 educational agency unless the parent is accompanied by an attorney. If the parent plans  
13 to be accompanied by an attorney under this section, the parent must give prior written  
14 notice of this fact to the agency. The purposes of the meeting are (i) for the parent to  
15 have an opportunity to discuss the petition and the facts that form the basis of the  
16 petition and (ii) for the local educational agency to have the opportunity to resolve the  
17 dispute.

18 (b) The parent and the local educational agency jointly may agree in writing to  
19 waive the meeting under subsection (a) of this section or to use the mediation process  
20 described in G.S. 115C-109.4.

21 (c) If the local educational agency does not resolve the dispute to the satisfaction  
22 of the parents within 30 days of the agency's receipt of the petition, the impartial  
23 hearing under G.S. 115C-109.6 may occur and all of the applicable timelines for that  
24 hearing shall commence.(d) If a resolution is reached to resolve the dispute at a  
25 meeting under subsection (a) of this section, the parties shall execute a legally binding  
26 agreement that is:

- 27 (1) Signed by both the parent and a representative of the local educational  
28 agency who has the authority to bind the agency;
- 29 (2) Enforceable in any State court of competent jurisdiction or in a district  
30 court of the United States; and
- 31 (3) Filed with the person designated by the State Board to receive notices  
32 and with the Office of Administrative Hearings.

33 (e) If the parties execute an agreement under subsection (d) of this section, either  
34 party may void the agreement by providing written notice within three business days of  
35 the agreement's execution to the person designated by the State Board to receive notices,  
36 the Office of Administrative Hearings, and the other party. Notwithstanding subsection  
37 (c) of this section, upon receipt of this notice, the impartial hearing under  
38 G.S. 115C-109.6 may occur and all of the applicable timelines for that hearing shall  
39 commence.

40 **"§ 115C-109.8. Procedural issues.**

41 (a) In matters alleging a procedural violation, the hearing officer may find that a  
42 child did not receive a free appropriate public education only if the procedural  
43 inadequacies (i) impeded the child's right to a free appropriate public education; (ii)  
44 significantly impeded the parents' opportunity to participate in the decision-making

1 process regarding the provision of a free appropriate public education to the parents'  
2 child; or (iii) caused a deprivation of educational benefits.

3 (b) A hearing officer may order a local educational agency to comply with  
4 procedural requirements under this Article and IDEA.

5 **"§ 115C-109.9. Review by review officer; appeals.**

6 (a) Any party aggrieved by the findings and decision of a hearing officer under  
7 G.S. 115C-109.6 or 115C-109.8 may appeal the findings and decision within 30 days  
8 after receipt of notice of the decision by filing a written notice of appeal with the person  
9 designated by the State Board under G.S. 107.2(b)(9) to receive notices. The State  
10 Board, through the Exceptional Children Division, shall appoint a Review Officer from  
11 a pool of review officers approved by the State Board of Education. The Review Officer  
12 shall conduct an impartial review of the findings and decision appealed under this  
13 section. The Review Officer conducting this review shall make an independent decision  
14 upon completion of the review. The decision of the Review Officer becomes final  
15 unless an aggrieved party brings a civil action under subsection (d) of this section. A  
16 copy of the decision shall be served upon each party and a copy shall be furnished to the  
17 attorneys of record and the Office of Administrative Hearings. The written notice shall  
18 contain a statement informing the parties of the right to file a civil action and the 30-day  
19 limitation period for filing a civil action under subsection (d) of this section.

20 (b) A Review Officer shall be an educator or other professional who is  
21 knowledgeable about special education and who possesses other qualifications as may  
22 be established by the State Board of Education. No person may be appointed as a  
23 Review Officer if that person is an employee of the State Board of Education, the  
24 Department of Public Instruction, or the local educational agency that has been involved  
25 in the education or care of the child whose parents have filed the petition.

26 (c) The State Board may enforce the final decision of the administrative law  
27 judge under G.S. 115C-109.6, if not appealed under this section, or the final decision of  
28 the Review Officer, by ordering a local educational agency:

- 29 (1) To provide a child with appropriate education;  
30 (2) To place a child in a private school that is approved to provide special  
31 education and that can provide the child an appropriate education; or  
32 (3) To reimburse parents for reasonable private school placement costs in  
33 accordance with this Article and IDEA when it is determined that the  
34 local educational agency did not offer or provide the child with  
35 appropriate education and the private school in which the parent  
36 placed the child was an approved school and did provide the child an  
37 appropriate education.

38 (d) Any party that does not have the right to appeal under this Part and any party  
39 who is aggrieved by the decision of the Review Officer under this section may institute  
40 a civil action in State court within 30 days after receipt of the notice of the decision or in  
41 federal court as provided in 20 U.S.C. § 1415.

42 (e) Except as provided under IDEA, upon the filing of a petition under  
43 G.S. 115C-109.6 and during the pendency of any proceedings under this Part, the child  
44 must remain in the child's then-current educational placement or, if applying for initial

1 admission to a public school, the child must be placed in the public school.  
2 Notwithstanding this subsection, the parties may agree in writing to a different  
3 educational placement for the child during the pendency of any proceedings under this  
4 Part.

5 "Part 1E. Special Education and Related Services Personnel.

6 **"§ 115C-110.1. Teacher qualifications.**

7 The Board shall adopt rules covering the qualifications of and standards for  
8 certification of teachers, teacher assistants, speech clinicians, school psychologists, and  
9 others involved in the education and training of children with disabilities.

10 **"§ 115C-110.2. Interpreters/transliterators.**

11 Each interpreter or transliterator employed by a local educational agency to provide  
12 services to hearing-impaired students must annually complete 15 hours of job-related  
13 training that has been approved by the local educational agency.

14 **"§ 115C-110.3 through 106.5. [Reserved]**

15 "Part 1F. Budgeting; Funds.

16 **"§ 115C-111.1. Out-of-state students; eligibility for State funds.**

17 Notwithstanding any policy or rule adopted by the State Board of Education, if a  
18 local school administrative unit provides services to a student under a current IEP from  
19 another state while a determination is being made regarding the student's eligibility for  
20 services as a child with disabilities in North Carolina, the local school administrative  
21 unit is entitled to receive State funding to serve the student while the determination is  
22 being made. If the student is later determined not to qualify for services in North  
23 Carolina, the local school administrative unit is not be required to repay State funds  
24 received while the determination is being made.

25 **"§ 115C-111.2. Contracts with private service providers.**

26 Local educational agencies furnishing special education and related services to  
27 children with disabilities may contract with private special education facilities or service  
28 providers to furnish any of these services that the public providers are unable to furnish.  
29 No contract between any public and private service provider is effective until it has  
30 received the prior written approval of the Board. The Board shall not withhold its  
31 approval of the contract unless the private facilities and providers do not meet the  
32 Board's standards established under this Article.

33 **"§ 115C-111.3. Cost of education of children in group homes, foster homes, etc.**

34 (a) Notwithstanding any other State law and without regard for the place of  
35 domicile of a parent, the cost of a free appropriate public education for a child with  
36 disabilities who is placed in or assigned to a group home or foster home, under State  
37 and federal law, shall be borne by the local board of education in which the group home  
38 or foster home is located. However, the local school administrative unit in which a child  
39 is domiciled shall transfer to the local school administrative unit in which the institution  
40 is located an amount equal to the actual local cost in excess of State and federal funding  
41 required to educate that child in the local school administrative unit for the fiscal year  
42 after all State and federal funding has been exhausted.

43 (b) The State Board of Education shall use State and federal funds appropriated  
44 for children with disabilities to establish a reserve fund to reimburse local boards of

1 education for the education costs of children assigned to group homes or other facilities  
2 as provided in subsection (a) of this section. Local school administrative units may  
3 submit a Special State Reserve Program application for foster home or group home  
4 children whose special education and related services costs exceed the per child group  
5 home allocation.

6 (c) The Department shall review the current cost of children with disabilities  
7 served in the local school administrative units with group homes or foster homes to  
8 determine the actual cost of services.

9 **"§ 115C-111.4. Nonreduction.**

10 Notwithstanding any of the other provisions of this Article, it is the intent of the  
11 General Assembly that funds appropriated by it for the operation of programs of special  
12 education and related services by local school administrative units not be reduced;  
13 rather, that adequate funding be made available to meet the special educational and  
14 related services needs of children with disabilities, without regard to which local  
15 educational agency has the child in its care, custody, control, or program.

16 **"§ 115C-111.5. Allocation of federal funds.**

17 Whenever any federal moneys for the special education and related services for  
18 children with disabilities are made available, these funds shall be allocated according to  
19 a formula designed by the Board consistent with federal laws and regulations. This  
20 formula shall insure equitable distribution of resources based upon the number of  
21 children with disabilities served by the respective agencies, and shall be implemented as  
22 funds are made available from federal and State appropriations.

23 **"§ 115C-111.6. Obligation to provide services for preschool children with  
24 disabilities.**

25 State funds appropriated to the public schools to implement preschool services for  
26 children with disabilities under this Article and IDEA shall be used to provide special  
27 education and related services to preschool children with disabilities. These State funds  
28 shall be used to supplement and not supplant existing federal, State, and local funding  
29 for the public schools.

30 Preschool children with disabilities will continue to be served by all other State  
31 funds to which they are otherwise entitled.

32 "Part 1G. Council on Educational Services for Exceptional Children.

33 **"§ 115C-112.1. Establishment; organization; powers and duties.**

34 (a) There is hereby established an Advisory Council to the State Board of  
35 Education to be called the Council on Educational Services for Exceptional Children.

36 (b) The Council shall consist of a minimum of 24 members to be appointed as  
37 follows: four ex officio members; one individual with a disability and one representative  
38 of a private school appointed by the Governor; one member of the Senate and one  
39 parent of a child with a disability appointed by the President Pro Tempore; one member  
40 of the House of Representatives and one parent of a child with a disability appointed by  
41 the Speaker of the House; and 14 members appointed by the State Board of Education.  
42 The State Board shall appoint members who represent individuals with disabilities,  
43 teachers, local school administrative units, institutions of higher education that prepare  
44 special education and related services personnel, administrators of programs for

1 children with disabilities, charter schools, parents of children with disabilities, a State or  
2 local official who carries out activities under the federal McKinney-Vento Homeless  
3 Assistance Act, vocational, community, or business organizations concerned with the  
4 provision of transition services, and others as required by IDEA. The majority of  
5 members on the Council shall be individuals with disabilities or parents of children with  
6 disabilities. The Council shall designate a chairperson from among its members. The  
7 designation of the chairperson is subject to the approval of the State Board of  
8 Education. The Board shall adopt rules to carry out this subsection.

9 Ex officio members of the Council shall be the following:

- 10 (1) The Secretary of Health and Human Services or the Secretary's  
11 designee.
- 12 (2) The Secretary of Juvenile Justice and Delinquency Prevention or the  
13 Secretary's designee.
- 14 (3) The Secretary of Correction or the Secretary's designee.
- 15 (4) The Superintendent of Public Instruction or the Superintendent's  
16 designee.

17 The term of appointment for all members except those appointed by the State Board  
18 of Education is two years. The term for members appointed by the State Board of  
19 Education is four years. No person shall serve more than two consecutive four-year  
20 terms.

21 Each Council member shall serve without pay, but shall receive travel allowances  
22 and per diem in the same amount provided for members of the North Carolina General  
23 Assembly.

24 (c) The Council shall meet in offices provided by the Department of Public  
25 Instruction on a date to be agreed upon by the members of the Council from meeting to  
26 meeting. The Council shall meet no less than once every three months. The Department  
27 of Public Instruction shall provide the necessary secretarial and clerical staff and  
28 supplies to accomplish the objectives of the Council.

29 (d) The Council shall:

- 30 (1) Advise the Board with respect to unmet needs within the State in the  
31 education of children with disabilities.
- 32 (2) Comment publicly on rules, policies, and procedures proposed by the  
33 Board regarding the education of children with disabilities.
- 34 (3) Assist the Board in developing evaluations and reporting on data to the  
35 Secretary of Education under the federal Individuals with Disabilities  
36 Education Act (IDEA), as amended.
- 37 (4) Advise the State Board in developing corrective action plans to  
38 address findings identified in federal monitoring reports required under  
39 the federal Individuals with Disabilities Education Act (IDEA), as  
40 amended.
- 41 (5) Advise the State Board in developing and implementing policies  
42 relating to the coordination of services for children with disabilities.
- 43 (6) Carry out any other responsibility as designated by federal law or the  
44 State Board."

1           **SECTION 3.(a)** G.S. 115C-81(b) reads as rewritten:

2           "(b) The Basic Education Program shall include course requirements and  
3 descriptions similar in format to materials previously contained in the standard course of  
4 study and it shall provide:

- 5           (1) A core curriculum for all students that takes into account the special  
6 needs of children;(2) A set of competencies, by grade level, for each  
7 curriculum area;  
8           (3) A list of textbooks for use in providing the curriculum;  
9           (4) Standards for student performance and promotion based on the  
10 mastery of competencies, including standards for graduation, that take  
11 into account children with disabilities and, in particular, include  
12 appropriate modifications;  
13           (5) A program of remedial education;  
14           (6) Required support programs;  
15           (7) A definition of the instructional day;  
16           (8) Class size recommendations and requirements;  
17           (9) Prescribed staffing allotment ratios;  
18           (10) Material and equipment allotment ratios;  
19           (11) Facilities guidelines that reflect educational program appropriateness,  
20 long-term cost efficiency, and safety considerations; and  
21           (12) Any other information the Board considers appropriate and necessary.

22           The State Board shall not adopt or enforce any rule that requires Algebra I as a  
23 graduation standard or as a requirement for a high school diploma for any student whose  
24 individualized education program (i) identifies the student as learning disabled in the  
25 area of mathematics and (ii) states that this learning disability will prevent the student  
26 from mastering Algebra I."

27           **SECTION 3.(b)** G.S. 115C-105.25(b)(4) reads as rewritten:

28           "(b) Subject to the following limitations, local boards of education may transfer  
29 and may approve transfers of funds between funding allotment categories:

- 30           ...  
31           (4) Funds allocated for children with disabilities, for students with limited  
32 English proficiency, and for driver's education shall not be transferred.  
33           ..."

34           **SECTION 3.(c)** G.S. 115C-149 reads as rewritten:

35           "**§ 115C-149. Policy. Chemically dependent children excluded from provisions of**  
36           **Article 9.**

37           The General Assembly of North Carolina hereby declares that the policy of the State  
38 is to ensure that an appropriate education is provided for drug and alcohol addicted  
39 children; however, drug and alcohol addicted children are not "children with  
40 disabilities" within the meaning of G.S. 115C-106.3(1) unless because of some other  
41 condition they meet that definition."

42           **SECTION 3.(d)** G.S. 115C-233 reads as rewritten:

43           "**§ 115C-233. Operation of summer schools.**

1 Each local school administrative unit may establish and maintain summer schools.  
2 Such summer schools as may be established shall be administered by local boards of  
3 education and shall be conducted in accordance with standards developed by the State  
4 Board of Education. The standards so developed shall specify the requirements for  
5 approved curriculum, the qualifications of the personnel, the length of the session, and  
6 the conditions under which students may be granted credit for courses pursued during a  
7 summer school. In determining the eligibility of students for admission to summer  
8 schools, boards of education shall be governed by Article 9 of this Chapter, and  
9 G.S. 115C-366(b) and 115C-367 to 115C-370. Boards of education of local school  
10 administrative units may provide for summer schools from funds made available for that  
11 purpose by the State Board of Education, funds appropriated to the local school  
12 administrative unit by the tax-levying authority, and from any other revenues available  
13 for the purpose."

14 **SECTION 3.(e)** G.S. 115C-238.29F(d)(4) reads as rewritten:

15 "(4) The school shall comply with policies adopted by the State Board of  
16 Education for charter schools relating to the education of children with  
17 disabilities."

18 **SECTION 3.(f)** G.S. 115C-238.29H(a) reads as rewritten:

19 **"§ 115C-238.29H. State and local funds for a charter school.**

20 (a) The State Board of Education shall allocate to each charter school:

- 21 (1) An amount equal to the average per pupil allocation for average daily  
22 membership from the local school administrative unit allotments in  
23 which the charter school is located for each child attending the charter  
24 school except for the allocation for children with disabilities and for  
25 the allocation for children with limited English proficiency;
- 26 (2) An additional amount for each child attending the charter school who  
27 is a child with disabilities; and
- 28 (3) An additional amount for children with limited English proficiency  
29 attending the charter school, based on a formula adopted by the State  
30 Board.

31 In accordance with G.S. 115C-238.29D(d), the State Board shall allow for annual  
32 adjustments to the amount allocated to a charter school based on its enrollment growth  
33 in school years subsequent to the initial year of operation.

34 In the event a child with disabilities leaves the charter school and enrolls in a public  
35 school during the first 60 school days in the school year, the charter school shall return a  
36 pro rata amount of funds allocated for that child to the State Board, and the State Board  
37 shall reallocate those funds to the local school administrative unit in which the public  
38 school is located. In the event a child with disabilities enrolls in a charter school during  
39 the first 60 school days in the school year, the State Board shall allocate to the charter  
40 school the pro rata amount of additional funds for children with disabilities."

41 **SECTION 3.(g)** G.S. 115C-242 reads as rewritten:

42 **"§ 115C-242. Use and operation of school buses.**

43 Public school buses may be used for the following purposes only, and it shall be the  
44 duty of the superintendent of the school of each local school administrative unit to

1 supervise the use of all school buses operated by such local school administrative unit  
2 so as to assure and require compliance with this section:

3 (1) A school bus may be used for the transportation of pupils enrolled in  
4 and employees in the operation of the school to which such bus is  
5 assigned by the superintendent of the local school administrative unit.  
6 Except as otherwise herein provided, such transportation shall be  
7 limited to transportation to and from such school for the regularly  
8 organized school day, and from and to the points designated by the  
9 principal of the school to which such bus is assigned, for the receiving  
10 and discharging of passengers. No pupil or employee shall be so  
11 transported upon any bus other than the bus to which such pupil or  
12 employee has been assigned pursuant to the provisions of this Article:  
13 Provided, that children enrolled in a Headstart program which is  
14 housed in a building owned and operated by a local school  
15 administrative unit where school is being conducted may be  
16 transported on public school buses, so long as the contractual  
17 arrangements made cause no extra expense to the State: Provided  
18 further, that children with disabilities may be transported to and from  
19 the nearest appropriate private school having a special education  
20 program approved by the State Board of Education if the children to be  
21 transported are or have been placed in that program by a local school  
22 administrative unit as a result of the State or the unit's duty to provide  
23 such children with a free appropriate public education.

24 ...  
25 (5) Local boards of education, under rules adopted by the State Board of  
26 Education, may permit the use and operation of school buses for the  
27 transportation of pupils and instructional personnel as the board deems  
28 necessary to serve the instructional programs of the schools. Included  
29 in the use permitted by this section is the transportation of children  
30 with disabilities, and children enrolled in programs that require  
31 transportation from the school grounds during the school day, such as  
32 special vocational or occupational programs. On any such trip, a city  
33 or county-owned school bus shall not be taken out of the State.

34 If State funds are inadequate to pay for the transportation approved  
35 by the local board of education, local funds may be used for these  
36 purposes. Local boards of education shall determine that funds are  
37 available to such boards for the transportation of children to and from  
38 the school to which they are assigned for the entire school year before  
39 authorizing the use and operation of school buses for other services  
40 deemed necessary to serve the instructional program of the schools.

41 Children with disabilities may be transported to and from the  
42 nearest appropriate private school having a special education program  
43 approved by the State Board of Education if the children to be  
44 transported have been placed in that program by a local school

1 administrative unit as a result of the State or the unit's duty to provide  
2 those children with a free appropriate public education.

3 ..."

4 **SECTION 3.(h)** G.S. 115C-250 reads as rewritten:

5 "**§ 115C-250. Authority to expend funds for transportation of children with**  
6 **disabilities.**

7 (a) The State Board of Education and local boards of education may expend  
8 public funds for transportation of children with disabilities who are unable because of  
9 their disability to ride the regular school buses and who have been placed in programs  
10 by a local school board as a part of its duty to provide these children with a free  
11 appropriate education under Article 9 of this Chapter. At the option of the local board of  
12 education with the concurrence of the State Board of Education, funds appropriated to  
13 the State Board of Education for contract transportation of children with disabilities may  
14 be used to purchase buses and minibuses as well as for the purposes authorized in the  
15 budget. The State Board of Education shall adopt rules concerning the construction and  
16 equipment of these buses and minibuses.

17 The Departments of Health and Human Services, Juvenile Justice and Delinquency  
18 Prevention, and Correction may also expend public funds for transportation of children  
19 with disabilities who are unable because of their disability to ride the regular school  
20 buses and who have been placed in programs by one of these agencies as a part of that  
21 agency's duty to provide these children with a free appropriate public education under  
22 Article 9 of this Chapter.

23 If a local area mental health center places a child with a disability in an educational  
24 program, the local area mental health center shall pay for the transportation of the child  
25 who is unable due to the disability, to ride the regular school buses to the program.

26 (b) Funds appropriated for the transportation of children with disabilities may be  
27 used to pay transportation safety assistants employed in accordance with  
28 G.S. 115C-245(e) for buses to which children with disabilities are assigned."

29 **SECTION 3.(i)** G.S. 115C-366.2 reads as rewritten:

30 "**§ 115C-366.2. Applicability to certain persons.**

31 For the purposes of G.S. 115C-366 and 115C-366.1 for any person who is a resident  
32 of a place which is not the person's place of domicile, because: (i) of the residence of a  
33 parent, guardian, or legal custodian who is a student, employee or faculty member, of a  
34 college or university, or a visiting scholar at the National Humanities Center; or (ii) the  
35 child is placed in or assigned to a group home, foster home, or other similar facility or  
36 institution, other than a child covered by G.S. 115C-111.3(a); or (iii) the child resides  
37 with a legal custodian who is not the child's parent or guardian, or (iv) the child resides  
38 in a pre-adoptive home following placement by a county department of social services  
39 or a licensed child-placing agency, those sections shall be applied by substituting the  
40 word "residing" for the word "domiciled," by substituting the word "residence" for the  
41 word "domicile," and by substituting the word "residents" for the word "domiciliaries."  
42 For purposes of this section, "legal custodian" means the person or agency that has been  
43 awarded legal custody of the child by a court.

1 This section shall not be construed to affect the ability of any person to acquire a  
2 new domicile."

3 **SECTION 3.(j)** G.S. 115C-367 reads as rewritten:

4 **"§ 115C-367. Assignment on certain bases prohibited.**

5 No person shall be refused admission to or be excluded from any public school in  
6 this State on account of race, creed, color or national origin. No school attendance  
7 district or zone shall be drawn for the purpose of segregating persons of various races,  
8 creeds, colors or national origins from the community.

9 Where local school administrative units have divided the geographic area into  
10 attendance districts or zones, pupils shall be assigned to schools within such attendance  
11 districts: Provided, however, that the board of education of a local school administrative  
12 unit may assign any pupil to a school outside of such attendance district or zone in order  
13 that such pupil may attend a school of a specialized kind including but not limited to a  
14 vocational school or school operated for, or operating programs for, pupils mentally or  
15 physically handicapped, or for any other reason which the board of education in its sole  
16 discretion deems sufficient.

17 The provisions of Part 1D of Article 9 of this Chapter, G.S. 115C-366(b), and  
18 G.S. 115C-367 to G.S. 115C-370 shall not apply to a temporary assignment due to the  
19 unsuitability of a school for its intended purpose nor to any assignment or transfer  
20 necessitated by overcrowded conditions or other circumstances which, in the sole  
21 discretion of the school board, require assignment or reassignment.

22 The provisions of Part 1D of Article 9 of this Chapter, G.S. 115C-366(b), and  
23 G.S. 115C-367 to G.S. 115C-370 shall not apply to an application for the assignment or  
24 reassignment by the parent, guardian or person standing in loco parentis of any pupil or  
25 to any assignment made pursuant to a choice made by any pupil who is eligible to make  
26 such choice pursuant to the provisions of a freedom of choice plan voluntarily adopted  
27 by the board of education of a local school administrative unit."

28 **SECTION 3.(k)** G.S. 115C-371 reads as rewritten:

29 **"§ 115C-371. Assignment to special education programs.**

30 Assignment of students to special education programs is subject to Article 9 of this  
31 Chapter."

32 **SECTION 3.(l)** G.S. 115C-391 reads as rewritten:

33 **"§ 115C-391. Corporal punishment, suspension, or expulsion of pupils.**

34 ...

35 (d1) A local board of education or superintendent shall suspend for 365 calendar  
36 days any student who:

37 (1) Brings onto educational property or to a school-sponsored curricular or  
38 extracurricular activity off educational property, or

39 (2) Possesses on educational property or at a school-sponsored curricular  
40 or extracurricular activity off educational property,

41 a weapon, as defined in G.S. 14-269.2(b), 14-269.2(b1), 14-269.2(g), and 14-269.2(h).  
42 The local board of education upon recommendation by the superintendent may modify  
43 this suspension requirement on a case-by-case basis that includes, but is not limited to,  
44 the procedures established under Article 9 of this Chapter for the discipline of students

1 with disabilities and may also provide, or contract for the provision of, educational  
2 services to any student suspended pursuant to this subsection in an alternative school  
3 setting or in another setting that provides educational and other services.

4 ...

5 (d3) A local board of education or superintendent shall suspend for 365 calendar  
6 days any student who, by any means of communication to any person or group of  
7 persons, makes a report, knowing or having reason to know the report is false, that there  
8 is located on educational property or at a school-sponsored curricular or extracurricular  
9 activity off educational property any device designed to destroy or damage property by  
10 explosion, blasting, or burning, or who, with intent to perpetrate a hoax, conceals,  
11 places, or displays any device, machine, instrument, or artifact on educational property  
12 or at a school-sponsored curricular or extracurricular activity off educational property,  
13 so as to cause any person reasonably to believe the same to be a bomb or other device  
14 capable of causing injury to persons or property. The local board upon recommendation  
15 by the superintendent may modify either suspension requirement on a case-by-case  
16 basis that includes, but is not limited to, the procedures established under Article 9 of  
17 this Chapter for the discipline of students with disabilities and may also provide, or  
18 contract for the provision of, educational services to any student suspended under this  
19 subsection in an alternative school setting or in another setting that provides educational  
20 and other services. For purposes of this subsection and subsection (d1) of this section,  
21 the term "educational property" has the same definition as in G.S. 14-269.2(a)(1).

22 ...

23 (g) Notwithstanding the provisions of this section, the policies and procedures for  
24 the discipline of students with disabilities shall be consistent with Article 9 of this  
25 Chapter and with federal laws and regulations.

26 ..."

27 **SECTION 3.(m)** G.S. 115C-397.1 reads as rewritten:

28 "**§ 115C-397.1. Management and placement of disruptive students.**

29 If, after a teacher has requested assistance from the principal two or more times due  
30 to a student's disruptive behavior, the teacher finds that the student's disruptive behavior  
31 continues to interfere with the academic achievement of that student or other students in  
32 the class, then the teacher may refer the matter to a school-based committee. The  
33 teacher may request that additional classroom teachers participate in the committee's  
34 proceedings. For the purposes of this section, the committee shall notify the student's  
35 parent, guardian, or legal custodian and shall encourage that person's participation in the  
36 proceedings of the committee concerning the student. Nothing in this section requires a  
37 student to be screened, evaluated, or identified as a child with a disability under Article  
38 9 of this Chapter. The committee shall review the matter and shall take one or more of  
39 the following actions: (i) advise the teacher on managing the student's behavior more  
40 effectively, (ii) recommend to the principal the transfer of the student to another class  
41 within the school, (iii) recommend to the principal a multidisciplinary evaluation of the  
42 student, (iv) recommend to the principal that the student be assigned to an alternative  
43 learning program, or (v) recommend to the principal that the student receive any  
44 additional services that the school or the school unit has the resources to provide for the

1 student. If the principal does not follow the recommendation of the committee, the  
2 principal shall provide a written explanation to the committee, the teacher who referred  
3 the matter to the committee, and the superintendent, of any actions taken to resolve the  
4 matter and of the reason the principal did not follow the recommendation of the  
5 committee.

6 This section shall be in addition to the supplemental to disciplinary action taken in  
7 accordance with any other law. The recommendation of the committee is final and shall  
8 not be appealed under G.S. 115C-45(c). Nothing in this section shall authorize a student  
9 to refer a disciplinary matter to this committee or to have the matter of the student's  
10 behavior referred to this committee before any discipline is imposed on the student."

11 **SECTION 3.(n)** G.S. 122C-3(13c) reads as rewritten:

12 "(13c) "Eligible infants and toddlers" means children with or at risk for  
13 developmental delays or atypical development until:

- 14 a. They have reached their third birthday;
- 15 b. Their parents have requested to have them receive services in  
16 the preschool program for children with disabilities established  
17 under Article 9 of Chapter 115C of the General Statutes; and
- 18 c. They have been placed in the program by the local educational  
19 agency.

20 In no event shall a child be considered an eligible toddler after the  
21 beginning of the school year immediately following the child's third  
22 birthday, unless the Secretary and the State Board enter into an  
23 agreement under G.S. 115C-106.4(c)."

24 **SECTION 3.(o)** The caption to Part 13A of Chapter 143B of the General  
25 Statutes reads as rewritten:

26 "Part 13A. Interagency Coordinating Council for Children with Disabilities from Birth  
27 to Five Years of Age."

28 **SECTION 3.(p)** The caption to G.S. 143B-179.6 reads as rewritten:

29 **"§ 143B-179.6. Interagency Coordinating Council for Children with Disabilities  
30 from Birth to Five Years of Age; agency cooperation."**

31 **SECTION 3.(q)** G.S. 143B-216.40 reads as rewritten:

32 **"§ 143B-216.40. Establishment; operations.**

33 There are established, and there shall be maintained, the following schools for the  
34 deaf: the Eastern North Carolina School for the Deaf at Wilson (K-12) and the North  
35 Carolina School for the Deaf at Morganton (K-12). The Department of Health and  
36 Human Services shall be responsible for the operation and maintenance of the schools.

37 The Board of Directors of the North Carolina Schools for the Deaf shall advise the  
38 Department and shall adopt rules concerning the schools as provided in G.S. 143B-173  
39 and G.S. 143B-216.40."

40 **SECTION 4.(a)** Article 25A of Chapter 115C of the General Statutes is  
41 amended by adding the following new section to read:

42 **"§ 115C-375.5. Education for Pregnant and Parenting Students.**

43 (a) Pregnant and parenting students shall receive the same educational instruction  
44 or its equivalent as other students. A local school administrative unit may provide

1 programs to meet the special scheduling and curriculum needs of pregnant and  
2 parenting students. However, student participation in these programs shall be voluntary  
3 and the instruction and curriculum must be comparable to that provided other students.

4 (b) Local boards of education shall adopt a policy to ensure that pregnant and  
5 parenting students are not discriminated against or excluded from school or any  
6 program, class, or extracurricular activity because they are pregnant or parenting  
7 students. The policy shall include, at a minimum, all of the following:

8 (1) Local school administrative units shall use, as needed, supplemental  
9 funds from the At-Risk Student Services allotment to support  
10 programs for pregnant and parenting students.

11 (2) Notwithstanding Part 1 of Article 26 of this Chapter, pregnant and  
12 parenting students shall be given excused absences from school for  
13 pregnancy and related conditions for the length of time the student's  
14 physician finds medically necessary. This includes absences due to the  
15 illness or medical appointment during school hours of a child of whom  
16 the student is the custodial parent.

17 (3) Homework and make-up work shall be made available to pregnant and  
18 parenting students to ensure that they have the opportunity to keep  
19 current with assignments and avoid losing course credit because of  
20 their absence from school."

21 **SECTION 4.(b)** This section applies beginning with the 2006-2007 school  
22 year.

23 **SECTION 5.** Article 3 of Chapter 150B of the General Statutes is amended  
24 by adding the following new section to read:

25 "**§ 150B-22.1. Special education petitions.**

26 (a) Notwithstanding any other provision of this Chapter, timelines and other  
27 procedural safeguards required to be provided under IDEA and Article 9 of Chapter  
28 115C of the General Statutes must be followed in an impartial due process hearing  
29 initiated when a petition is filed under G.S. 115C-109.6 with the Office of  
30 Administrative Hearings.

31 (b) The administrative law judge who conducts a hearing under  
32 G.S. 115C-109.6 shall not be a person who has a personal or professional interest that  
33 conflicts with the judge's objectivity in the hearing. Furthermore, the judge must possess  
34 knowledge of, and the ability to understand, IDEA and legal interpretations of IDEA by  
35 federal and state courts. The judges are encouraged to participate in training developed  
36 and provided by the State Board of Education under G.S. 115C-107.2(h). (c) For  
37 the purpose of this section, the term "IDEA" means The Individuals with Disabilities  
38 Education Improvement Act, 20 U.S.C. § 1400, et seq. (2004), as amended, and its  
39 regulations."**SECTION 6.(a)** The State Board of Education, through the Division of  
40 Exceptional Children, and the Office of Administrative Hearings shall develop its  
41 memorandum of understanding as required under G.S. 115C-109.6(j), as created in  
42 Section 2 of this act, by October 31, 2006. The memorandum of understanding shall  
43 establish procedures and timelines that are efficient and meet the criteria of IDEA so  
44 that impartial hearings are expeditiously handled. At the same time, the procedures and

1 timelines should recognize there are some complicated issues that may require  
2 additional time to resolve. In particular, this memorandum should address at least the  
3 following:

- 4 (1) The reasons, number of days, and means for providing notice to  
5 parties.
- 6 (2) When a petition is initiated for the purpose of determining when a  
7 decision shall be reached. Specifically, this shall address when  
8 mediation is begun before and after a petition is filed and when no  
9 mediation is begun.
- 10 (3) Whether mediated conferences subject to Chapter 150B of the General  
11 Statutes are appropriate under IDEA and, if so, when they should  
12 occur and how will they affect the timelines.
- 13 (4) The number of extensions to be allowed and the basis on which an  
14 extension may be granted.
- 15 (5) The standard of review for cases going to review officers.
- 16 (6) Any other procedural or tolling issue that the State Board of Education  
17 or the Office of Administrative Hearings considers necessary to  
18 address.

19 **SECTION 6.(b)** The State Board and the Office of Administrative Hearings  
20 shall report jointly to the House Select Committee on the Education of Students with  
21 Disabilities by November 15, 2006, on the memorandum of understanding. This report  
22 shall make any recommendations as to funding issues that must be resolved or statutory  
23 changes that are needed, or both, in order to implement the memorandum of  
24 understanding.

25 **SECTION 7.** The State Board of Education shall ensure that the Allotment  
26 Policy Manual includes, in fiscal year 2006-2007 and thereafter, the following language  
27 related to local education agencies' use of funds allotted for textbooks:

28 "Local Education Agencies (LEAs) shall use their State textbook funds to provide,  
29 to the same extent as is provided to nondisabled students, textbooks for students with  
30 disabilities. LEAs also shall, at a minimum, provide teachers of children with  
31 disabilities with the same teachers' editions provided to teachers of nondisabled  
32 students."

33 **SECTION 8.** There is appropriated from the General Fund to the State  
34 Board of Education for children with disabilities the sum of ten million nine hundred  
35 eighty-one thousand seven hundred seventy-six dollars (\$10,981,776) for the 2006-2007  
36 fiscal year in order to increase the per child with disabilities allocation.

37 **SECTION 9.** Sections 7 and 8 of this act become effective July 1, 2006. The  
38 remainder of this act is effective when it becomes law.



**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

**H**

**D**

**BILL DRAFT 2005-LE-295A [v.1] (5/12)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
6/1/2006 11:01:55 AM**

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Sponsors: Representative.

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Referred to:

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1 A HOUSE RESOLUTION URGING THE UNITED STATES DEPARTMENT OF  
2 EDUCATION TO RESPOND QUICKLY BUT THOUGHTFULLY ON THE  
3 FINAL REGULATIONS FOR STUDENTS WITH DISABILITIES, ALLOW  
4 SUFFICIENT TIME FOR STATES TO IMPLEMENT THE FINAL  
5 REGULATIONS, AND AFFORD AS MUCH FLEXIBILITY AS POSSIBLE TO  
6 THE STATES DURING THE INTERIM PERIOD.

7       Whereas, North Carolina has had a Statewide testing program in reading and  
8 mathematics in grades 3 through 8 since the 1992-93 school year; and

9       Whereas, the Individuals with Disabilities Education Act (IDEA) and the  
10 subsequent passage of No Child Left Behind (NCLB) have caused changes to occur in  
11 the Statewide testing program; and

12       Whereas, these two major federal acts together affect the testing of all  
13 students, including students with disabilities and Limited English Proficient (LEP)  
14 students; and

15       Whereas, the design, process and procedures for appropriately assessing  
16 students with disabilities and LEP students is a challenge; and

17       Whereas, there is recognition of the importance of scientifically-based  
18 instruction for all students, including students with disabilities and LEP students, with  
19 appropriate universally designed assessments to measure progress; and

20       Whereas, on December 15, 2005, the United States Department of Education  
21 (USED) issued proposed regulations in the Federal Register; and

22       Whereas, the USED has received numerous comments and concerns  
23 expressed during the comment period for the above-mentioned proposed regulations;  
24 and

25       Whereas, the Council of Chief State School Officers (CCSSO) and the  
26 National Association of State Directors of Special Education (NASDSE) have expressed  
27 explicitly their concerns about the testing of students with disabilities; and

1           Whereas, the ability of states to make the changes necessary to meet the  
2 regulations in a timely manner is usually inadequate; and  
3 Whereas, the stakes involved for students, schools, school districts, and the State are high based  
4 on these assessments; Now, therefore,

5 Be it resolved by the House of Representatives:

6           **SECTION 1.** The North Carolina House of Representatives urges the United  
7 States Department of Education to respond quickly but thoughtfully on the final  
8 regulations for students with disabilities, allow sufficient time for states to implement  
9 the final regulations, and afford as much flexibility as possible to the states during the  
10 interim period.

11           **SECTION 2.** The Principal Clerk shall transmit certified copies of this  
12 resolution to the President of the United States and the Secretary of Education of the  
13 United States.

14           **SECTION 3.** This resolution is effective upon adoption.

